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Education

34

PART 400 TO END
Revised as of July 1, 1990

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PART 400 to End

Revised as of July 1, 1990

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Cite this Code: **CFR**

To cite the regulations in this volume use title, part and section number. Thus, 34 CFR 400.1 *refers to title 34, part 400, section 1.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

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An index to the text of "Title 3—The President" is carried within that volume.

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MARTHA L. GIRARD,
Director,
Office of the Federal Register.

July 2, 1990.

THIS TITLE

Title 34—EDUCATION is presently composed of three volumes (Parts 1 to 299, Parts 300 to 399, and Part 400 to End). The contents of these volumes represent all regulations codified under this title of the CFR as of July 1, 1990.

A Redesignation Table appears in the Finding Aids section of each volume.

For this volume Jim Wickliffe was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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Title 34—Education

(This book contains Part 400 to End)

Editorial Note: Title 34—Education was established at 45 FR 30803, May 9, 1980, effective May 4, 1980. Nomenclature changes affecting Title 34 (Part 400 to End) appear at 45 FR 86301, Dec. 30, 1980.

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CHAPTER IV—OFFICE OF VOCATIONAL AND ADULT EDUCATION, DEPARTMENT OF EDUCATION

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PART 400—VOCATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS

Subpart A—General

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400.1 What are the purposes of the Carl D. Perkins Vocational Education Act?
400.2 What programs are authorized by the Carl D. Perkins Vocational Education Act?
400.3 What regulations apply to the Vocational Education Programs?
400.4 What definitions apply to the Vocational Education Programs?

AUTHORITY: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

SOURCE: 50 FR 33231, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 400.1 What are the purposes of the Carl D. Perkins Vocational Education Act?

The purposes of the Carl D. Perkins Vocational Education Act are to—

(a) Assist the States to expand, improve, modernize, and develop quality vocational education programs in order to meet the needs of the Nation's existing and future work force for marketable skills and to improve productivity and promote economic growth;

(b) Assure that individuals who are inadequately served under vocational education programs are assured access to quality vocational education programs, especially—

(1) Individuals who are disadvantaged;

(2) Individuals who are handicapped;

(3) Men and women who are entering nontraditional occupations;

(4) Adults who are in need of training and retraining;

(5) Individuals who are single parents, homemakers, or single pregnant women;

(6) Individuals with limited English proficiency; and

(7) Individuals who are incarcerated in correctional institutions;

(c) Promote greater cooperation between public agencies and the private sector in preparing individuals for employment, in promoting the quality of vocational education in the States, and in making the vocational system more responsive to the labor market in the States;

(d) Improve the academic foundations of vocational students and to aid in the application of newer technologies (including the use of computers) in terms of employment or occupational goals;

(e) Provide vocational education services to train, retrain, and upgrade employed and unemployed workers in new skills for which there is a demand in that State or employment market;

(f) Assist the most economically depressed areas of a State to raise employment and occupational competencies of its citizens;

(g) Assist the States to utilize a full range of supportive services, special programs, and guidance counseling and placement to achieve the basic purposes of the Act;

(h) Improve the effectiveness of consumer and homemaking education and to reduce the limiting effects of sex-role stereotyping on occupations, job skills, levels of competency, and careers; and

(i) Authorize national programs designed to—

(1) Meet designated vocational education needs; and

(2) Strengthen the vocational education research process.

(Authority: 20 U.S.C. 2301, 2331)

[50 FR 33231, Aug. 16, 1985, as amended at 53 FR 35258, Sept. 12, 1988]

§ 400.2 What programs are authorized by the Carl D. Perkins Vocational Education Act?

The Carl D. Perkins Vocational Education Act authorizes—

(a) The State vocational education program which includes—

(1) The Vocational Education Opportunities Program under the basic State grant, as described in 34 CFR 401.51 through 34 CFR 401.58;

(2) The Vocational Education Improvement, Innovation, and Expansion Program under the basic State grant, as described in 34 CFR 401.59 through 34 CFR 401.61; and

(3) Special Programs which include the—

(i) State Assistance for Vocational Education Support Programs by Community-Based Organizations as described in 34 CFR 401.71 and 34 CFR 401.72;

(ii) Consumer and Homemaking Education Program as described in 34 CFR 401.73;

(iii) Adult Training, Retraining, and Employment Development Program as described in 34 CFR 401.75;

(iv) Comprehensive Career Guidance and Counseling Program as described in 34 CFR 401.76; and

(v) Industry-Education Partnership for Training in High-Technology Occupations Program as described in 34 CFR 401.78; and

(b) National Programs which include—

(1) The Bilingual Vocational Training Program as described in 34 CFR Part 407;

(2) The Bilingual Vocational Instructor Training Program as described in 34 CFR 408;

(3) The Bilingual Vocational Materials, Methods, and Techniques Program as described in 34 CFR Part 409;

(4) The Indian and Hawaiian Natives Program as described in 34 CFR 410;

(5) Demonstration Centers for the Retraining of Dislocated Workers as described in 34 CFR Part 411;

(6) The Cooperative Demonstration Program as described in 34 CFR Part 412;

(7) The State Equipment Pools Programs as described in 34 CFR Part 414;

(8) Model Centers for Vocational Education for Older Individuals as described in 34 CFR Part 415;

(9) The National Vocational Education Research Program as described in 34 CFR Part 416; and

(10) The National Center for Research in Vocational Education as described in 34 CFR Part 417.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 400.3 What regulations apply to the Vocational Education Programs?

In addition to the regulations contained in this part and the applicable program regulations, the programs under 34 CFR Parts 401, 407 through 412, and 414 through 417 are subject to the following Education Department General Administrative Regulations (EDGAR) in 34 CFR—

(a) Part 74 (Administration of Grants);

(b) Part 75 (Direct Grant Programs), which applies only to Parts 407 through 412 and Parts 414 through 417;

(c) Part 76 (State-Administered Programs), which applies only to Part 401;

(d) Part 77 (Definitions that apply to Department of Regulations);

(e) Part 78 (Education Appeal Board); and

(f) Part 79 (Intergovernmental Review of Department of Education Programs and Activities) except that part 79 does not apply to any applications submitted by an Indian tribal organization that is eligible under 34 CFR 410.2(a)(1) of the Indian and Hawaiian Natives Program (34 CFR Part 410).

(Authority: 20 U.S.C. 2301 *et seq.*)

[50 FR 33231, Aug. 16, 1985, as amended at 55 FR 21715, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21715, May 25, 1990, in § 400.3(f) was amended by adding "except that part 79 does not apply to any applications submitted by an Indian tribal organization that is eligible under 34 CFR 410.2(a)(1) of the Indian and Hawaiian Natives Program (34 CFR Part 410)" before the period at the end of the sentence, effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 400.4 What definitions apply to the Vocational Education Programs?

(a) *Definitions in EDGAR.* Unless otherwise provided, the following terms used in this part and 34 CFR Parts 401, 407 through 412, and 414 through 417 are defined in 34 CFR 77.1:

Acquisition
Applicant
Application
Award
Budget
Contract
Department
ED
EDGAR
Facilities

Federally recognized Indian tribal government
Fiscal year
GEPA
Grant
Nonprofit
Nonpublic
Private
Project
Secondary school
Secretary
State
State educational agency
Supplies

(b) *Other definitions.* The following definitions also apply to this part and 34 CFR Parts 401, 407 through 412, and 414 through 417:

Act means the Carl D. Perkins Vocational Education Act.

Administration means activities of a State necessary for the proper and efficient performance of its duties under the Act, including supervision, but not including curriculum development activities, personnel development, technical assistance, or research activities.

Apprenticeship training program means a program registered with the Department of Labor or the State apprenticeship agency in accordance with the Act of August 16, 1937, known as the National Apprenticeship Act, which is conducted or sponsored by an employer, a group of employers, or a joint apprencticeship committee representing both employers and a union, and which contains all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.

Area vocational education school means—

(1) A specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(2) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to individuals who are available for study in preparation for entering the labor market;

(3) A technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market; or

(4) The department or division of a junior college or community college or university operating under the policies of the State board and which provides vocational education in no less than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if, in the case of a school, department, or division described in paragraphs (3) and (4) of this definition, it admits as regular students both indivduals who have completed high school and individuals who have left high school.

Career guidance and counseling means those programs—

(1) Which pertain to the body of subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decisionmaking, placement skills, and knowledge and understanding of local, State, and national occupational, educational, and labor market needs, trends, and opportunities; and

(2) Which assist individuals in making and implementing informed educational and occupational choices.

Community-based organization means a private nonprofit organization of demonstrated effectiveness which is representative of communities or siginficant segments of communities and which provides job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, 70,001, Jobs for Youth, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(10) of the Rehabilitation Act of 1973), agencies serving youth, agencies serving the handicapped, agencies serv[illegible] displaced homemakers, union-related organizations, and employer-related nonprofit organizations), or an organization of demostrated effectiveness serving nonreservation Indians (including the National Urban Indian Council), as well as tribal governments and Native Alaskan groups.

(Authority: Sec. 4(5) of the Job Training Partnership Act)

Construction includes construction of new buildings and acquisition, and expansion, remodeling, and alteration of existing buildings, and includes site grading and improvement and architect fees.

Cooperative education means a method of instruction of vocational education for individuals who, through written cooperative arrangements between the school and employers, receive instruction, including required academic course and related vocational instruction by alternation of study in school with a job in any occupational field, but the two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

Criminal offender means any individual who is charged with or convicted of any criminal offense, including a youth offender or a juvenile offender.

Correctional institution means any—

(1) Prison;

(2) Jail;

(3) Reformatory;

(4) Work farm;

(5) Detention center; or

(6) Halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.

Curriculum materials means instructional and related or supportive material, including materials using advanced learning technology, in any occupational field which is designed to strengthen the academic foundation and prepare individuals for employment at the entry level or to upgrade occupational competencies of those previously or presently employed in any occupational field, and appropriate counseling and guidance material.

Disadvantaged means individuals (other than handicapped individuals) who have economic or academic disadvantages and who require special services and assistance in order to enable them to succeed in vocational educational programs. The term includes individuals who are members of economically disadvantaged families, migrants, individuals who have limited English proficiency and individuals who are dropouts from, or who are identified as potential dropouts from, secondary school. For the purpose of this definition, an individual who scores at or below the 25th percentile on a standardized achievement or aptitude test, whose secondary school grades are below 2.0 on a 4.0 scale (where the grade "A" equals 4.0), or fails to attain minimal academic competencies may be considered "academically disadvantaged." The definition does not include individuals with learning disabilities.

(House Report No. 98-1129, 98th Cong., 2d Sess. p. 100 (1984))

Economically depressed area means an economically integrated area within any State in which a chronically low level of economic activity or a deteriorating economic base has caused such adverse effects as—

(1) A rate of unemployment which has exceeded by 50 per centum or more the average rate of unemployment in the State, or in the Nation, for each of the three years preceding the year for which the designation is made; or

(2) A large concentration of low-income families, the designation of which is approved by the Secretary as consistent with the purposes of the Act, with these criteria, and with such other criteria as the Secretary may prescribe.

Economically disadvantaged family or individual means a family or individual which the State board identifies as low income on the basis of uniform methods that are described in the State plan. A State must use one or more of the following standards as an indicator of low income:

(1) Annual income at or below the official poverty line established by the Director of the Office of Management and Budget.

(2) Eligibility for free or reduced-priced school lunch.

(3) Eligibility for Aid to Families with Dependent Children or other public assistance programs.

(4) Receipt of a Pell Grant or comparable State program of need-based financial assistance.

(5) Eligibility for participation in programs assisted under Title II of the JTPA.

Eligible recipient means a local educational agency or a postsecondary educational institution.

Handicapped, when applied to individuals, means individuals who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or persons with specific learning disabilities, who by reason thereof require special education and related services, and who, because of their handicapping condition, cannot succeed in the regular vocational education program without special education assistance.

High technology means state-of-the-art computer, microelectronic, hydraulic, pneumatic, laser, nuclear, chemical, telecommunication, and other technologies being used to enhance productivity in manufacturing, communication, transportation, agriculture, mining, energy, commercial, and similar economic activity, and to improve the provision of health care.

Homemaker means an individual who—

(1) Is an adult; and

(2) Has worked as an adult primarily without remuneration to care for the home and family, and for that reason has diminished marketable skills.

Institution of higher education means an institution of higher education as defined in section 1201 of the Higher Education Act of 1965.

JTPA means the Job Training Partnership Act (Pub.L. 97-300).

Limited English proficiency, when used with reference to individuals, means individuals—

(1)(i) Who were not born in the United States or whose native language is a language other than English;

(ii) Who came from environments where a language other than English is dominant; or

(iii) Who are American Indian and Alaskan Native students and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(2) Who by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny those individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(Authority: 20 U.S.C. 3223)

Local educational agency means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program.

Postsecondary educational institution means an institution legally authorized to provide postsecondary education within a State, or any postsecondary educational institution operated by or on behalf of any Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

Private vocational training institution means a business or trade school, or technical institution or other technical or vocational school, in any State, which—

(1) Admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by the institution;

(2) Is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations;

(3) Has been in existance for two years or has been specially accredited by the Secretary as an institution meeting the other requirements of this definition; and

(4) Is accredited—

(i) by a nationally recognized accrediting agency or association listed by the Secretary;

(ii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Secretaray; or

(iii) If the Secretary determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by the Secretary and composed of persons specially qualified to evaluate training provided by schools of the category, which comittee shall prescribe the standards of content, scope, and quality which must be met by those schools and shall also determine whether particular schools meet those standards.

Program year means a period beginning on July 1 and ending on the following June 30.

School facilities means classrooms and related facilities, including initial equipment, and interests in lands on which the facilities are constructed. The term does not include any facility intended primarily for events for which admission is to be charged to the general public.

Single parent means an individual who—

(1) Is unmarried or legally separated from a spouse; and

(2) Has a minor child or children for which the parent has either custody or joint custody.

Small business means for-profit enterprises employing five hundred or fewer employees.

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

State board means a State board designated or created by State law as the sole State agency responsible for the administration of vocational education, or for supervision of the administration of vocational education in the State.

State council means the State council on vocational education established in accordance with section 112 of the Act.

Vocational education means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, in such fields as agriculture, business occupations, home economics, health occupations, marketing and distributive occupations, technical and emerging occupations, modern industrial and agriculture arts, and trades and industrial occupations, or for additional preparation for a career in those fields, and in other occupations requiring other than a baccalaureate or advanced degree and vocational student organization activities as an integral part of the program. For purposes of this definition, "organized education program" means only—

(1) Instruction, including career guidance and counseling, related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from that training; and

(2) The acquisition, including leasing, maintenance, and repair, of instructional equipment, supplies, and teaching aids. The term does not mean construction, acquisition of initial equipment or buildings, or the acquisition or rental of land.

Vocational student organizations means those organizations for individuals enrolled in vocational education programs which engage in activities as an integral part of the instructional program. These organizations may have State and national units which aggregate the work and purposes of instruction in vocational education at the local level.

(Authority: Sec. 521; 20 U.S.C. 2471)

[50 FR 33231, Aug. 16, 1985, as amended at 51 FR 25493, July 14, 1986]

PART 401—STATE VOCATIONAL EDUCATION PROGRAM

Subpart A—General

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AUTHORITY: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

SOURCE: 50 FR 33235, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 401.1 What is the State Vocational Education Program?

(a) Under the State Vocational Education Program, the Secretary makes grants to States, to assist them, local educational agencies, postsecondary educational institutions, and other agencies and institutions to administer the Federally assisted vocational education programs that are authorized by the Act.

(b) The State Vocational Education Program consists of the programs under the basic State grant for vocational education authorized by Title II of the Act and the Special Programs authorized by Title III of the Act.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 401.2 What regulations apply to the State Vocational Education Program?

The following regulations apply to the State Vocational Education Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 401.3 What definitions apply to the State Vocational Education Program?

The definitions in 34 CFR 400.4 apply to the State Vocational Education Program.

(Authority: Sec. 521; 20 U.S.C. 2471)

Subpart B—How Does a State Participate in the State Vocational Education Program?

§ 401.10 What is the State board?

A State that desires to participate in the programs authorized by the Act shall, consistent with State law, designate or establish a State board of vocational education which shall be the sole State agency responsible for the administration or the supervision of the State's vocational education program.

(Authority: Sec. 111(a); 20 U.S.C. 2321(a))

§ 401.11 What are the principal responsibilities of the State board?

The principal responsibilities of the State board must include—

(a) The coordination of the development, submission, and implementation of the State plan;

(b) The evaluation of the programs, services, and activities assisted under the Act, as required by § 401.19(a) (8) and (9);

(c) The development, in consultation with the State council on vocational education, and the submission to the Secretary of the State plan;

(d) Consultation with the State council on vocational education and other appropriate agencies, groups, and individuals involved in the planning, administration, evaluation, and coordination of programs under the Act;

(e) Convening and meeting as a State board, consistent with State law and procedure, when the State board determines it is necessary to meet to carry out its functions under the Act, but not less than four times annually; and

(f) The adoption of those procedures the State board considers necessary to implement State level coordination with the State job training coordinating council in order to encourage cooperation between programs under the Act and programs under the JTPA.

(Authority: Sec. 111(a); 20 U.S.C. 2321(a))

§ 401.12 What are the additional responsibilities of the State board?

(a) The State board shall make available to each private industry council (PIC) established within the State under section 102 of the JTPA a current listing of all programs assisted under the Act.

(b)(1) The State board, in consultation with the State council on vocational education established under § 401.14, shall establish at least two technical committees to advise the State council and the State board on the development of model curricula to address State labor market needs. The technical committees shall develop an inventory of skills that may be used by the State board to define state-of-the-art model curricula. This inventory must identify the type of and level of knowledge and skills needed for entry, retention, and advancement in occupational areas taught in the State.

(2) The State board shall establish procedures for membership, operation, and duration of the technical committees that are consistent with the purposes of the Act. Their membership must be composed of representatives of—

(i) Employers from any relevant industry or occupation for which the committee is established;

(ii) Trade or professional organizations representing any relevant occupations; and

(iii) Organized labor, where appropriate.

(3)(i) A State may use funds reserved under § 401.90(b)(2) for the Vocational Education Improvement, Innovation, and Expansion Program to support the activities of the technical committees it establishes under paragraph (b)(1) of this section.

(ii) For the purpose of § 401.19(a)(4), regarding the requirement that a State distribute at least eighty percent of its total basic State grant allotment to eligible recipients, a State shall consider the funds used to support the technical committees as part of the State's portion (the portion that may not exceed twenty percent) of the State's allotment.

(c) The State board shall identify as a State imposed requirement any State rule or policy it imposes relating to the administration and operation of programs funded under the Act, including any rule or policy based on the State board's interpretation of any Federal law, regulation, or guideline.

(d) Except for the functions described in § 401.11, the State board may delegate any of its other administrative, operational, or supervisory responsibilities, in whole or in part, to one or more appropriate State agencies.

(Authority: Secs. 111(a), (c), (d), (e), 521(1); 20 U.S.C. 2321(a), (c), (d), (e), 2471(1))

[50 FR 33235, Aug. 16, 1985; 50 FR 38802, Sept. 25, 1985]

§ 401.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?

(a) A State that desires to participate in the State Vocational Education Program shall assign one individual, within the appropriate agency established or designated by the State board under § 401.12(d) to administer vocational education programs within the State, to work full time to assist the State board to fulfill the purposes of the Act by—

(1) Administering the program of vocational education for single parents, homemakers, and single pregnant women described in § 401.55 and the sex equity program described in § 401.56;

(2) Gathering, analyzing, and disseminating data on the—

(i) Adequacy and effectiveness of vocational education programs in the State in meeting the education and employment needs of women, including the preparation of women for employment in technical occupations, new and emerging occupational fields, and occupations regarded as nontraditional for women; and

(ii) Status of men and women students and employees in the programs in paragraph (a)(2)(i) of this section;

(3)(i) Reviewing vocational educational programs, including career guidance and counseling, for sex stereotyping and sex bias, with particular attention to practices which tend to inhibit the entry of women in high technology occupations; and

(ii) Submitting recommendations for inclusion in the State plan for programs and policies to overcome sex bias and sex stereotyping in the programs in paragraph (a)(3)(i) of this section;

(4) Submitting to the State board an assessment of the State's progress in meeting the purposes of the Act with regard to overcoming sex discrimination and sex stereotyping;

(5) Reviewing proposed actions on grants, contracts, and the policies of the State board to ensure that the needs of women are addressed in the administration of that Act;

(6) Developing recommendations for programs of information and outreach to women concerning vocational education and employment opportunities for women, including opportunities for careers as technicians and skilled workers in technical fields and new and emerging occupational fields;

(7) Providing technical assistance and advice to local educational agencies, postsecondary institutions, and other interested parties in the State, on expanding vocational opportunities for women; and

(8) Assisting administrators, instructors, and counselors in implementing

programs and activities to increase access for women, including displaced homemakers and single heads of households, to vocational education and to increase male and female students' enrollment in nontraditional programs.

(b) A State shall, in accordance with § 401.91(b), reserve at least $60,000 to carry out the provisions of paragraph (a) of this section, including the provision of necessary and reasonable staff support.

(c) For the purposes of this section, the term "State" includes only the fifty States and the District of Columbia.

(Approved by the Office of Management and Budget under control number 1830-0030)

(Authority: 20 U.S.C. 2321(b), 2331)

[50 FR 33235, Aug. 16, 1985, as amended at 51 FR 25493, July 14, 1986; 53 FR 35258, Sept. 12, 1988]

§ 401.14 Must a State establish a State council on vocational education?

A State that desires to participate in the State Vocational Education Program shall establish a State council on vocational education, which must be appointed—

(a) By the Governor; or

(b) In the case of States in which the members of State board of education are elected, including election by the State legislature, by the State board of education.

(Authority: Sec. 112(a); 20 U.S.C. 2322(a); House Report No. 98-1129, 98th Cong, 2d Sess, p. 89 (1984))

[51 FR 25493, July 14, 1986]

§ 401.15 What are the membership requirements of the State council on vocational education?

(a) Each State council must be composed of thirteen individuals, and must be broadly representative of citizens and groups within the State having an interest in vocational education.

(b) Each State council must consist of—

(1) Seven individuals who are representative of the private sector in the State and who must constitute a majority of the membership—

(i) Five of whom must be representative of business, industry, and agriculture including—

(A) One member who is representative of small business concerns; and

(B) One member who is a private sector member of the State job training coordinating council established pursuant to section 122 of the JTPA; and

(ii) Two of whom must be representatives of labor organizations; and

(2) Six individuals, one of whom must be representative of special education, who are representative of—

(i) Secondary and postsecondary vocational institutions (equitably distributed among those institutions);

(ii) Career guidance and counseling organizations within the State; and

(iii) Individuals who have special knowledge and qualifications with respect to the special educational and career development needs of special populations, including women, disadvantaged individuals, handicapped individuals, individuals with limited English proficiency, and minorities.

(c) In selecting individuals to serve on the State council on vocational education, the State shall give due consideration to the appointment of individuals who serve on a private industry council under the JTPA, or on State councils established under other related Federal programs.

(d) Each State shall certify to the Secretary the establishment and membership of the State council by the beginning of each State plan period described in § 401.17.

(Authority: Sec. 112(a), (b); 20 U.S.C. 2322(a), (b))

[50 FR 33235, Aug. 16, 1985, as amended at 51 FR 25493, July 14, 1986]

§ 401.16 What are the responsibilities of the State council on vocational education?

(a)(1) The State council on vocational education shall meet as soon as practical after the Secretary accepts its certification and shall select from among its membership a chairperson who must be a representative of the private sector.

(2) The State council on vocational education shall adopt rules that

govern the time, place, and manner of meeting, as well as council operating procedures and staffing. The rules must provide for at least one public meeting each year at which the public is given an opportunity to express views concerning the vocational education program of the State.

(b) Each State council on vocational education, during each State plan period described in § 401.17 unless otherwise indicated in the regulations in this section, shall—

(1) Meet with the State board or its representatives to advise on the development of the subsequent State plan, or any amendments to the current State plan, while the State plan or amendment is being developed;

(2) Advise the State board and make reports to the Governor, the business community, and general public of the State concerning—

(i) Policies the State should pursue to strengthen vocational education, with particular attention to programs for the handicapped; and

(ii) Initiatives and methods the private sector could undertake to assist in the modernization of vocational education programs;

(3) Analyze and report on the distribution of all vocational education funds in the State and on the availability of vocational education activities and services within the State;

(4) Consult with the State board on the establishment of evaluation criteria for vocational education programs within the State;

(5) Submit recommendations to the State board on the conduct of vocational education programs conducted in the State which emphasize the use of business concerns and labor organizations;

(6) Assess and report on the distribution of financial assistance under the Act, particularly the distribution of financial assistance between secondary vocational education programs and postsecondary vocational education programs;

(7) Recommend procedures to the State board to ensure and enhance the participation of the public in the provision of vocational education at the local level within the State, particularly the participation of local employers and local labor organizations;

(8) Report to the State board on the extent to which the individuals described in § 401.51 are provided with equal access to quality vocational education programs; and

(9)(i) At least once every two years—

(A) Evaluate the vocational education program delivery systems assisted under the Act and the JTPA in terms of their adequacy and effectiveness in achieving their respective purposes; and

(B) Make recommendations to the State board on the adequacy and effectiveness of the coordination that takes place between vocational education and the JTPA; and

(ii) Advise, in writing, the Governor, the State board, the State job training coordinating council, the Secretary, and the Secretary of Labor of these findings and recommendations.

(c)(1) Each State council on vocational education is authorized to—

(i) Obtain the services of whatever professional, technical, and clerical personnel are necessary to enable it to carry out its functions under the Act; and

(ii) Contract for whatever services are necessary to enable it to carry out its evaluation functions, independent of programmatic and administrative control by other State boards, agencies, and individuals.

(2) The expenditure of funds awarded to a State council on vocational education by the Secretary must be solely determined by that State council and may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual. Each State council on vocational education shall designate an appropriate State agency, or other public agency eligible to receive funds under the Act, to act as its fiscal agent for purposes of disbursement, accounting, and auditing.

(Approved by the Office of Management and Budget under control number 1830-0030)

(Authority: Sec. 112(c)-(f); 20 U.S.C. 2322(c)-(f))

[50 FR 33235, Aug. 16, 1985, as amended at 51 FR 25493, July 14, 1986; 51 FR 26687, July 25, 1986]

§ 401.17 What are the State plan requirements?

(a) A State that desires to participate in the State Vocational Education Program shall submit to the Secretary a State plan for a three program year period in the case of the initial plan and a two program year period thereafter, together with any annual amendments the State board determines to be necessary.

(b) Each State shall carry out its programs under the State Vocational Education Program on the basis of program years which coincide with program years under section 104(a) of the JTPA.

(c) The provisions of 34 CFR 76.103 do not apply to the State Vocational Education Program.

(Approved by the Office of Management and Budget under control number 1830-0029)

(Authority: Sec. 113(a)(1); 20 U.S.C. 2323(a)(1))

§ 401.18 How is the State plan developed?

(a) In formulating the State plan, and any amendments to the State plan, the State board shall meet with and utilize the State council on vocational education established under § 401.14.

(b) After providing appropriate and sufficient notice to the public, the State board shall conduct at least two public hearings in the State for the purpose of affording all segments of the public and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan.

(c) In developing the State plan, the State board shall—

(1) Assess the current and projected occupational needs and the current and projected demand for general occupational skills within the State;

(2) Examine the needs of students, including adults, in order to determine how best to improve student skill levels in light of the State's occupational and skill requirements;

(3) Assess the special needs of groups of individuals described in § 401.51 for access to vocational education and vocational services in terms of labor market needs;

(4) Assess the quality of vocational education in terms of—

(i) The pertinence of programs to the workplace and to new and emerging technologies;

(ii) The responsiveness of programs to the current and projected occupational needs in the State;

(iii) The capacity of programs to facilitate entry into, and participation in, vocational eduction, and to ease the school-to-work and secondary-to-postsecondary transitions;

(iv) The technological and educational quality of vocational curricula, equipment, and instructional materials to enable vocational students and instructors to meet the challenges of increased technological demands of the workplace; and

(v) The capacity of vocational education programs to meet the needs for general occupational skills and the improvement of academic foundations in order to address the changing content of jobs;

(5) Determine the capacity of local educational agencies, with respect to secondary education, and postsecondary educational institutions, to deliver the vocational education services necessary to meet the needs identified through the assessments required by paragraphs (c) (1) through (4) of this section; and

(6) Determine, for each program year, how the services and activities supported under the Act may be expected to assist the State in meeting the needs identified through the assessments required by paragraphs (c) (1) through (4) of this section.

(Approved by the Office of Management and Budget under control number 1830-0029)

(Authority: Sec. 113(a)(3); 20 U.S.C. 2323(a)(3))

§ 401.19 What must the State plan contain?

(a) *Assurances.* To participate in the programs authorized under the State Vocational Education Program, the State shall include the following assurances in its State plan:

(1) That the State board will comply with the requirements of Titles I, II, III, and V of the Act (including the maintenance of fiscal effort requirement in § 401.22).

(Authority: Sec. 113(b)(1); 20 U.S.C. 2323(b)(1))

(2) That the State will comply with the distribution of assistance requirements contained in §§ 401.95 and 401.96.

(Authority: Sec. 113(b)(1)(B); 20 U.S.C. 2323(b)(1)(B))

(3) That, to the extent consistent with the number and location of handicapped and disadvantaged individuals who are enrolled in private elementary and secondary schools in the State, the State will provide for the participation of these individuals in the Vocational Education Opportunities Program.

(Authority: Sec. 113(b)(1)(C); 20 U.S.C. 2323(b)(1)(C))

(4) That the State will distribute at least eighty percent of its total basic State grant allotment to eligible recipients or combinations of eligible recipients. Funds distributed to State-operated schools or institutions are counted as if they were distributed to eligible recipients.

(Authority: Sec. 113(b)(4); 20 U.S.C. 2323(b)(4); House Report No. 98-1129, 98th Cong. 2d Sess. p. 96 (1984))

(5) That the State will distribute all of the State basic grant funds reserved for handicapped and disadvantaged individuals under § 401.92 (a) and (b) to eligible recipients or combinations of eligible recipients, in accordance with §§ 401.95 and 401.96.

(Authority: Sec. 113(b)(4); 20 U.S.C. 2323(b)(4))

(6) That in using funds allotted for single parents, homemakers, or single pregnant women under § 401.92(d)—

(i) The State will emphasize assisting individuals with the greatest financial need; and

(ii) That in serving homemakers, the State will give special consideration to homemakers who, because of divorce, separation, or the death or disability of a spouse, must prepare for paid employment.

(Authority: 20 U.S.C. 2323(b)(7), 2331)

(7) That the State will provide relevant training and vocational education activities to men and women who desire to enter occupations that are not traditionally associated with their sex.

(Authority: Sec. 113(b)(8); 20 U.S.C. 2323(b)(8))

(8) That the State will develop measures for evaluating the effectiveness of programs assisted under the Act in meeting the needs identified in the State plan, including measurements of such factors as—

(i) The occupations to be trained for, which must reflect a realistic assessment of the labor market needs of the State;

(ii) The levels of skills, to be achieved in particular occupations, which must reflect the hiring needs of employers; and

(iii) The basic employment competencies to be used in performance outcomes, which must reflect the hiring needs of employers.

(Authority: Sec. 113(b)(9)(A); 20 U.S.C. 2323(b)(9)(A))

(9) That the State will establish appropriate measures for evaluating the effectiveness of programs for the handicapped under the Act, as a component of the measures developed under paragraph (a)(8) of this section.

(Authority: Sec. 113(b)(9)(B); 20 U.S.C. 2323(b)(9)(B))

(10) That each program year the State will evaluate all of the projects, services, and activities, supported under this part, of at least twenty percent of the participating eligible recipients, so that by the end of a five year period every local program which has received Federal funds will have been evaluated.

(Authority: Sec. 113(b)(9)(C); 20 U.S.C. 2323(b)(9)(C); House Report No. 98-1129, 98th Cong. 2d Sess. p. 97 (1984))

(11) That the State will fund programs of personnel development and curriculum development that further the goals identified in the State plan.

(Authority: Sec. 113(b)(11); 20 U.S.C. 2323(b)(11))

(12) That the vocational education needs of those identifiable segments of the population in the State that have the highest rates of unemployment have been thoroughly assessed, and that those needs are reflected in, and addressed by, the State plan.

(Authority: Sec. 113(b)(12); 20 U.S.C. 2323(b)(12))

(13) That the State board will cooperate with the State council on vocational education in carrying out the State council's duties under this part.

(Authority: Sec. 113(b)(13); 20 U.S.C. 2323(b)(13))

(14) That none of the funds expended under the Act will be used to acquire equipment (including computer software) in any instance in which its acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity, or its employees, or any affiliate of such an organization.

(Authority: Sec. 113(b)(14); 20 U.S.C. 2323(b)(14))

(15) That for each program year, expenditures for career guidance and counseling from allotments for the basic State grant authorized by Title II of the Act, and the Comprehensive Career Guidance and Counseling Program under the Special Programs authorized by Title III, Part D of the Act, will not be less than the expenditures for guidance and counseling programs in the State that were assisted under section 134(a) of the Vocational Education Act of 1963 for fiscal year 1984.

(Authority: Sec. 113(b)(15); 20 U.S.C. 2323(b)(15))

(16) That Federal funds made available under the Act will be used to supplement, and to the extent practicable, increase the amount of State and local funds that would in the absence of those Federal funds be made available for the uses specified in the State plan, and in no case to supplant those State or local funds.

(Authority: Sec. 113(b)(16); 20 U.S.C. 2323(b)(16))

(17) That the State will provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, Federal funds paid to the State, including Federal funds paid by the State to eligible recipients under the Act.

(Authority: Sec. 113(b)(17); 20 U.S.C. 2323(b)(17))

(18) That the State, in using basic State grant funds reserved for vocational education services and activities for handicapped individuals and disadvantaged individuals under § 401.92, will—

(i) Provide equal access to those individuals—

(A) In recruitment, enrollment, and placement activities; and

(B) To the full range of vocational programs available to nonhandicapped and nondisadvantaged individuals, including occupationally specific courses of study, cooperative education, and apprenticeship programs; and

(ii) Provide vocational education programs and activities for handicapped individuals—

(A) In the least restrictive environment in accordance with section 612(5)(B) of the Education of the Handicapped Act;

(B) Which are included, whenever appropriate, as a component of the individualized education program required under section 612(4) and section 614(a)(5) of that Act; and

(C) Which are planned through the coordination of appropriate representatives of vocational education and special education.

(Authority: Sec. 204(a); 20 U.S.C. 2334(a))

(19) That programs under the Adult Training, Retraining and Employment Development Program authorized by Title III, Part C of the Act—

(i) Are designed with the active participation of the State council established under § 401.14;

(ii) Make maximum effective use of existing institutions, are planned to avoid duplication of programs or institutional capabilities, and, to the fullest extent practicable, are designed to strengthen institutional capacity to meet the education and training needs addressed by the Adult Training, Retraining, and Employment Development Program;

(iii) Involve close cooperation with and participation by public and private sector employers and public and private agencies working with problems of employment and training and economic development; and

(iv) Involve coordination with programs under the Rehabilitation Act of 1973 and the Education of the Handicapped Act, where appropriate.

(Authority: Sec. 322(b)(2); 20 U.S.C. 2372(b)(2))

(20) That funds received under the Industry-Education Partnership for Training in High-Technology Occupations Program authorized by Title III, Part E of the Act—

(i) Will be used solely for vocational education programs designed to train skilled workers and technicians in high-technology occupations, including programs providing related instruction to apprentices, and projects to train skilled workers needed to produce, install, operate, and maintain high technology equipment, systems, and processes; and

(ii) Will be used, to the maximum extent practicable, in coordination with the JTPA to avoid duplication of effort, and to ensure maximum effective utilization of funds under the Act and the JTPA.

(Authority: Sec. 342(b) (1), (2); 20 U.S.C. 2392(b) (1), (2))

(21) That not less than fifty percent of the aggregate costs of projects assisted under the Industry-Education Partnership for Training in High-Technology Occupations Programs authorized by Title III, Part E of the Act will be provided from non-Federal sources, except as provided in § 401.80(a)(3), and that not less than fifty percent of the non-Federal share of the aggregate costs in the State will be provided by participating business and industrial firms.

(Authority: Sec. 342(b)(3); 20 U.S.C. 2392(b)(3))

(22) That projects assisted under the Industry-Education Partnership for Training in High-Technology Occupations Program authorized by Title III, Part E of the Act will be—

(i) Coordinated with similar programs assisted under the basic State grant program and, to the maximum extent practicable (consistent with the purposes of programs assisted under the basic State grant program), supportive services will be organized to serve both programs; and

(ii) Developed with the active participation of the State council established under § 401.14.

(Authority: Sec. 342(b) (4), (5); 20 U.S.C. 2392(b) (4), (5))

(b) *Descriptions.* To participate in the programs authorized under the State Vocational Education Program, the State shall include the following descriptions in its State plan:

(1) The manner in which the State will comply with the requirements for programs for the handicapped and for the disadvantaged described in paragraph (a)(18) of this section and § 401.101.

(Authority: Sec. 113(b)(1)(A); 20 U.S.C. 2323(b)(1)(A))

(2) The planned uses of Federal funds available for vocational education for each program year for which the State plan is submitted and how the State carried out the requirements of § 401.18(c).

(Authority: Sec. 113(b)(2); 20 U.S.C. 2323(b)(2))

(3) The progress the State has made in achieving the goals set forth in each preceding State plan under the Act.

(Authority: Sec. 113(b)(3); 20 U.S.C. 2323(b)(3))

(4) The criteria the State board will use in approving applications of eligible recipients and allocating funds under the State Vocational Education Program to eligible recipients. These criteria must ensure that the State allocates more funds under the State Vocational Education Program to eligible recipients in units of local government that are in economically depressed areas (including both urban and rural units) or which have high unemployment, as determined by the State, than it allocates to eligible re-

cipients that are not in economically depressed areas or areas which have high unemployment.

(Authority: Sec. 113(b)(5); 20 U.S.C. 2323(b)(5))

(5) Whatever methods of administration are necessary for the proper and efficient administration of the Act.

(Authority: Sec. 113(b)(6); 20 U.S.C. 2323(b)(6))

(6) The methods proposed for the joint planning and coordination of programs carried out under the Act with programs conducted under the JTPA, the Adult Education Act, Chapter 1 of the Education Consolidation and Improvement Act of 1981, the Education of the Handicapped Act, and the Rehabilitation Act of 1973, and with apprenticeship training programs.

(Authority: Sec. 113(b)(10); 20 U.S.C. 2323(b)(10))

(7) Any delegation of functions under § 401.12(d).

(Authority: Sec. 111(a)(2); 20 U.S.C. 2321(a)(2))

(8) If the Secretary requires, the manner in which the State board will comply with the requirements of Titles I, II, III, and V of the Act (including the maintenance of fiscal effort requirement in § 401.22).

(Authority: Sec. 113(b)(1); 20 U.S.C. 2323(b)(1))

(9) The uniform methods the State board will use to identify economically disadvantaged families and individuals.

(Authority: Sec. 521(20); 20 U.S.C. 2471(20))

(10) The appropriate criteria for determining which eligible recipients are exempt from the local application requirements under § 401.41.

(Authority: Sec. 115(c)(2); 20 U.S.C. 2325(c)(2))

(11) The methods and procedures the State will use for coordinating vocational education programs, services, and activities under the Adult Training, Retraining, and Employment Development Program authorized by Title III, Part C of the Act with programs of assistance for dislocated workers funded under Title III of the JTPA.

(Authority: Sec. 323(a); 20 U.S.C. 2373(a))

(12) The criteria the State uses to designate an economically depressed area or an area with high unemployment.

(Authority: Sec. 521(13); 20 U.S.C. 2471(13))

(13) A summary of the recommendations made at the public hearings on the State plan and the State board's response.

(Approved by the Office of Management and Budget under control number 1830-0029)

(Authority: Sec. 113(a)(2)(B); 20 U.S.C. 2323(a)(2)(B))

[50 FR 33235, Aug. 16, 1985; 50 FR 38802, Sept. 25, 1985, as amended at 51 FR 25493, July 14, 1986; 53 FR 35258, Sept. 12, 1988]

§ 401.20 What procedures does a State use to submit its State plan?

(a)(1) The State board shall submit its State plan for review and comment to the State legislature and the State job training coordinating council under section 122 of the JTPA not less than sixty days before the State plan is submitted to the Secretary.

(2) If the matters raised by the comments of the State legislature and the State job training coordinating council are not addressed in the State plan, the State board shall submit those comments to the Secretary with the State plan.

(3) If the State legislature is not in session during the sixty-day period described in paragraph (a)(1) of this section, the State board shall submit the plan to the State legislature for review and comment at its next session, and forward any comments to the Secretary.

(b)(1) The State board shall submit its State plan for review and comment to the State council on vocational education not less than sixty days before the State plan is submitted to the Secretary.

(2) If the State council on vocational education finds that the final State plan is objectionable for any reason, including that it does not meet the labor market needs of the State, the

State council shall file its objections with the State board.

(3) The State board shall respond to any objections of the State council in submitting the State plan to the Secretary.

(c)(1) The State board shall submit its State plan to the Secretary by the May 1 preceding the first program year for which the plan will be in effect.

(2) The State plan shall be considered to be the general application required by section 435 of the General Education Provisions Act.

(Approved by the Office of Management and Budget under control number 1830-0029)

(Authority: Sec. 114; 20 U.S.C. 2324)

§ 401.21 When are amendments to State plans required?

The State board, in consultation with the State council, shall submit one or more amendments to the State plan to the Secretary when required by 34 CFR 76.140 or when changes in program conditions, labor market conditions, funding, or other factors require substantial amendment of an approved State plan. All amendments must be subject to review by the State job training coordinating council and the State council on vocational education.

(Approved by the Office of Management and Budget under control number 1830-0029)

(Authority: Sec. 113(c)(1); 20 U.S.C. 2323(c)(1))

§ 401.22 What is the maintenance of fiscal effort requirement under the State Vocational Education Program?

(a) The Secretary may not make a payment under the Act to a State for any fiscal year unless the Secretary determines that the fiscal effort per student, or the aggregate expenditures of that State, from State sources, for vocational education for the fiscal year (or program year) preceding the fiscal year (or program year) for which the determination is made, at least equaled its effort or expenditures for vocational education for the second preceding fiscal year (or program year).

(b)(1) If the Secretary makes a determination that a waiver would be equitable due to exceptional or uncontrollable circumstances affecting the ability of the State to meet the requirements of paragraph (a) of this section, the Secretary may waive those requirements for one year only. Examples of exceptional or uncontrollable circumstances affecting the financial ability of the State are a natural disaster or an unforeseen and precipitous decline in financial resources.

(2) No level of expenditures permitted under a waiver may be used as a basis for computing the fiscal effort required under paragraph (a) of this section for subsequent years. Instead, for subsequent years, fiscal effort must be computed on the basis of the level of expenditures that would have been required had a waiver not been granted.

(Authority: Sec. 503; 20 U.S.C. 2463)

[50 FR 33235, Aug. 16, 1985, as amended at 51 FR 25493, July 14, 1986]

Subpart C—How Does the Secretary Make a Grant to a State?

§ 401.30 How does the Secretary make allotments under the State Vocational Education Program?

(a)(1) From funds appropriated under section 3(a) of the Act for the basic State grant and section 3(b) of the Act for the programs that compose the Special Programs, the Secretary allots funds each fiscal year according to the provisions of section 101 of the Act.

(2) Upon approval of its State plan and any annual amendments, the Secretary makes one or more grant awards from those allotments to the State.

(b)(1) From funds appropriated under section 3(c) of the Act, the Secretary allots funds each fiscal year for State councils on vocational education according to the provisions of section 112(f)(1) of the Act.

(2) Upon approval of the State plan and submission of an annual budget covering the proposed expenditures of the State council on vocational education for the following program year,

the Secretary makes an award to the State council.

(Authority: Sec. 501(b); 20 U.S.C. 2461(b))

[50 FR 33235, Aug. 16, 1985, as amended at 51 FR 25493, July 14, 1986]

§ 401.31 How does the Secretary make reallotments under the State Vocational Education Program?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 401.30(a) will not be required for any fiscal year for carrying out the program for which the allotment was made, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to utilize them promptly and effectively upon reallotment.

(2) The Secretary announces in the FEDERAL REGISTER the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purposes for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: Sec. 101(b); 20 U.S.C. 2311(b))

§ 401.32 When does the Secretary approve State plans and amendments?

(a)(1) The Secretary approves a State plan, or an amendment to a State plan, unless the amendments propose changes that are inconsistent with the requirements and purposes of the Act, within sixty days of its receipt if it complies with the requirements of the Act and applicable regulations.

(2) Before the Secretary finally disapproves a State plan, or an amendment to a State plan, the Secretary gives reasonable notice and an opportunity for a hearing to the State board.

(b) In reviewing a State plan, or an amendment to a State plan, the Secretary considers available comments from the State legislature, the State job training coordinating council, and the State council on vocational education.

(Authority: Sec. 114; 20 U.S.C. 2324)

Subpart D—How Does a State Make an Award to an Eligible Recipient?

§ 401.40 How does a State carry out the State Vocational Education Program?

(a) Unless otherwise indicated in the regulations in this part, a State board shall carry out projects, services, and activities under the State Vocational Education Program—

(1) Directly;

(2) Through a school operated by the State board;

(3) Through awards to State agencies or institutions such as vocational schools or correctional institutions; or

(4) Through awards to eligible recipients.

(b) For the purpose of paragraph (a) of this section, a State board acts directly when it—

(1) Carries out projects, services, or activities using its own staff (except at a school operated by the State board); or

(2) Contracts for State-wide projects, services, or activities such as research, curriculum development, and teacher training.

(c) The regulations in this part also authorize a State to carry out certain projects, services, and activities under the State Vocational Education Program by making an award to an entity other than an eligible recipient, such as a community-based organization, or an employer.

(d)(1) For the purpose of requirements dealing with local applications (§ 401.41) and the distribution of funds to eligible recipients (§§ 401.19(a) (4) and (5) and 401.19(b)(4)), projects, services, and activities carried out by a school operated by the State board under paragraph (a)(2) of this section, carried out by a State agency or institution under paragraph (a)(3) of this section, or carried out by an entity other than an eligible recipient under paragraph (c) of this section, are considered to be carried out by an eligible recipient.

(2) For the purpose of § 401.19(a)(4), regarding the requirement that a

State distribute at least eighty percent of its total basic State grant allotment to eligible recipients, a State shall consider all funds awarded to an eligible recipient as part of this local portion (at least eighty percent) of the State's allotment.

(Authority: Secs. 113(b) (4), (5), 115, 201(f)(3), 201(h)(2), 203(a), 252(b); 20 U.S.C. 2323(b) (4), (5), 2325, 2331(f)(3), 2331(h)(2), 2333(a), 2342(b); House Report No. 98-1129, 98th Cong. 2d Sess. p. 96 (1984))

§ 401.41 What are the local application requirements under the State Vocational Education Program?

(a) Except as provided in paragraph (d) of this section, and unless otherwise provided by the regulations in this part, each eligible recipient that desires to receive funds under the State vocational education program shall submit to the State board an application for the use of those funds that—

(1) Satisfies the requirements established by the State board; and

(2) Is for any period of time covered by the State plan.

(b) The State board shall establish requirements for local applications, and amendments to local applications, except that each local application must—

(1) Describe the vocational education programs, services, and activities to be funded; and

(2) Describe how the proposed programs, services, and activities will be coordinated with relevant programs under the JTPA and the Adult Education Act, in order to avoid duplication.

(c) The eligible recipient shall make the local application available for review and comment by interested parties, including the appropriate administrative entity under the JTPA.

(d) The State board may exempt an eligible recipient which provides relatively few vocational education programs, services, and activities with a limited total of Federal and State funds, from the requirements of this section.

(Approved by the Office of Management and Budget under control number 1830-0030)

(Authority: Sec. 115; 20 U.S.C. 2325)

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic State Grant?

§ 401.50 What are the components of the basic State grant?

The basic State grant, authorized by Title II of the Act, consists of two programs—

(a) The Vocational Education Opportunities Program; and

(b) The Vocational Education Improvement, Innovation, and Expansion Program.

(Authority: 20 U.S.C. 2331 *et seq.*)

§ 401.51 What is the Vocational Education Opportunities Program?

Each State shall use funds reserved in accordance with §§ 401.90(b) and 401.92 to provide vocational education services and activities designed to meet the special needs of, and enhance the participation of—

(a) Handicapped individuals;

(b) Disadvantaged individuals;

(c) Adults who are in need of training or retraining;

(d) Individuals who are single parents, homemakers, or single pregnant women;

(e) Individuals who participate in programs designed to eliminate sex bias and stereotyping in vocational education; and

(f) Criminal offenders who are serving in a correctional institution.

(Authority: 20 U.S.C. 2331 (a), (b))

[50 FR 33235, Aug. 16, 1985, as amended at 53 FR 35259, Sept. 12, 1988]

§ 401.52 How may funds under the Vocational Education Opportunities Program be used to serve handicapped individuals?

(a) A State shall use funds reserved for handicapped individuals in accordance with § 401.92(a) only for the Federal share of expenditures that are limited to supplemental or additional staff, equipment, materials, and services that are not provided to other individuals in vocational education and that are essential for handicapped individuals to participate in vocational education.

(b) If the conditions of handicapped students require a separate program, each State may use these funds only for the Federal share of the costs of the services and activities in separate vocational education programs for handicapped individuals which exceed the average per-pupil expenditures for the comparable regular vocational education services and activities of the eligible recipient.

(Authority: Sec. 201 (c)(1); 20 U.S.C. 2331(c)(1))

§ 401.53 How may funds under the Vocational Education Opportunities Program be used to serve disadvantaged individuals?

(a)(1) A state shall use funds reserved for disadvantaged individuals in accordance with § 401.92(b) only for the Federal share of expenditures that are limited to supplemental or additional staff, equipment, materials, and services that are not provided to other individuals in vocational education and that are essential for disadvantaged individuals to participate in vocational education.

(2) If the conditions of disadvantaged students require a separate program, each State may use these funds only for the Federal share of the costs of the services and activities in separate vocational education programs for disadvantaged individuals which exceed the average per-pupil expenditures for the comparable regular vocational education services and activities of the eligible recipient.

(b)(1) A State may use funds described in paragraph (a) of this section for—

(i) The improvement of vocational education services and activities designed to provide equal access to quality vocational education to disadvantaged individuals; and

(ii) Services and activities which apply the latest technological advances to courses of instruction for disadvantaged individuals.

(2) A State may also use funds described in paragraph (a) of this section to acquire modern machinery and tools, but only for schools at which at least seventy-five percent of the students enrolled are economically disadvantaged.

(Authority: Sec. 201 (c)(2), (d); 20 U.S.C. 2331 (c)(2), (d))

§ 401.54 How may funds under the Vocational Education Opportunities Program be used to serve adults who are in need of training or retraining?

(a) A State shall use funds reserved for adults in need of training or retraining in accordance with § 401.92(c) to provide, improve, and expand adult and postsecondary vocational education services and activities to train and retrain adults.

(b) A State may use funds described in paragraph (a) of this section for—

(1) Services and activities developed in coordination with the State agency administering Title III of the JTPA;

(2) Additional training under Title III of the JTPA;

(3) Vocational education programs for training or retraining adults, including programs for older individuals and displaced homemakers;

(4) Services for adults in other vocational education programs, including the costs of instruction and the costs of keeping school facilities open longer;

(5) Individuals who have completed or left high school and who are enrolled in organized programs of study for which credit is given toward an associate or other degree, but which are not designed as baccalaureate or higher degree programs; and

(6) Individuals who have already entered the labor market, or have completed or left high school, and who are not described in paragraph (b)(5) of this section.

(Authority: Sec. 201(e); 20 U.S.C. 2331(e))

[50 FR 33235, Aug. 16, 1985; 50 FR 38802, Sept. 25, 1985]

§ 401.55 How may funds under the Vocational Education Opportunities Program be used to serve individuals who are single parents, homemakers, or single pregnant women?

A State shall use funds reserved for individuals who are single parents, homemakers, or single pregnant women in accordance with § 401.92(d) only to—

(a) Provide, subsidize, reimburse, or pay for vocational education and training activities, including basic literacy instruction and necessary educational materials, that will give single parents, homemakers, or single pregnant women marketable skills;

(b) Make subgrants to eligible recipients for expanding vocational education services where this expansion directly increases the eligible recipients' capacity for providing single parents, homemakers, or single pregnant women, with marketable skills;

(c) Make subgrants to community-based organizations for the provision of vocational education services to single parents, homemakers, or single pregnant women, if the State determines that a community-based organization has demonstrated effectiveness in providing comparable or related services to single parents, homemakers, or single pregnant women, taking into account the demonstrated performance of such an organization in terms of the cost and quality of its training and the characteristics of the participants;

(d) Make vocational education and training programs more accessible to single parents, homemakers, or single pregnant women, by assisting them with child care or transportation services or by organizing and scheduling those programs so that they are more accessible; or

(e) Provide information to single parents, homemakers, or single pregnant women to inform them of vocational education programs and related support services.

(Authority: 20 U.S.C. 2331(f))

[53 FR 35259, Sept. 12, 1988]

§ 401.56 How may funds under the Vocational Education Opportunities Program be used to serve individuals who participate in programs designed to eliminate sex bias and stereotyping in vocational education?

(a) A State shall use funds reserved for individuals who participate in programs designed to eliminate sex bias and stereotyping in vocational education in accordance with § 401.92(e) for—

(1) Programs, services, and activities to eliminate sex bias and stereotyping in secondary and postsecondary vocational education programs;

(2) Vocational education programs, services, and activities for girls and women aged 14 through 25, designed to enable the participants to support themselves and their families; and

(3) Support services for individuals participating in vocational education programs, services, and activities described in paragraphs (a)(1) and (a)(2) of this section, including dependent-care services and transportation.

(b) A State may waive the age limitations in paragraph (a)(2) of this section if the person described in § 401.13(a) determines that the waiver is essential to meet the objectives of this section.

(Authority: Sec. 201(g); 20 U.S.C. 2331(g))

[50 FR 33235, Aug. 16, 1985; 50 FR 38802, Sept. 25, 1985]

§ 401.57 How may funds under the Vocational Education Opportunities Program be used for criminal offenders who are serving in a correctional institution?

A State shall use funds reserved for criminal offenders who are serving in a correctional institution in accordance with § 401.92(f) to provide vocational education services and activities designed to meet the special needs of, and to enhance the participation of, criminal offenders who are serving in correctional institutions.

(Authority: Sec. 201(b); 20 U.S.C. 2331(b))

§ 401.58 In what additional ways may funds under the Vocational Education Opportunities Program be used?

(a) In addition to the services and activities authorized by §§ 401.52 through 401.57, a State may use funds under the Vocational Education Opportunities Program, in accordance with those sections, for—

(1) Basic skills instruction for vocational education students which is related to their instructional program, if the State board determines that the instruction is necessary to carry out the purposes of the Vocational Education Opportunities Program;

(2) Vocational education through arrangements with private vocational

training institutions, private postsecondary educational institutions, and employers if these institutions or employers—

(i)(A) Can make a significant contribution to obtaining the objectives of the state plan; and

(B) Can provide substantially equivalent training at a lesser cost; or

(ii) Can provide equipment or services not available in public institutions; and

(3) Placement services for students who have successfully completed vocational education programs.

(b) To the extent practicable, a State shall include work-site programs, such as cooperative vocational education, work-study, and apprenticeship programs, in the programs it supports with funds under the Vocational Education Opportunities Program.

(Authority: Sec. 201 (h), (i); 20 U.S.C. 2331 (h), (i))

§ 401.59 What is the Vocational Educational Improvement, Innovation, and Expansion Program?

(a) A State shall use funds allotted under its basic State grant, and reserved in accordance with § 401.90(b)(2), to meet the needs identified in the State plan to expand, improve, modernize or develop high quality vocational education projects, services, or activities that will—

(1) Provide the Nation's existing and future workforce with marketable skills;

(2) Improve productivity; and

(3) Promote economic growth.

(b)(1) Funds used under § 401.60(a) may not be used to maintain existing projects, services, or activities.

(2) Funds used under § 401.60 (b) or (c) may be used to maintain existing services or activities.

(c) For the purpose of paragraph (b)(1) of this section, any vocational education project, service, or activity that was not provided by the recipient during the instructional term that preceded funding under this program may be considered a new, expanded, improved, modernized, or developed project, service, or activity, and may be considered so for up to three years.

(Authority: Secs. 2(1), 251(a); 20 U.S.C. 2301(1), 2341(a))

§ 401.60 How may funds under the Vocational Education Improvement, Innovation, and Expansion Program be used?

(a) A State may use funds under the Vocational Education Improvement, Innovation, and Expansion Program to accomplish the purposes described in § 401.59, by supporting—

(1) The improvement of vocational education programs within the State designed to improve the quality of vocational education, including high-technology programs involving an industry-education partnership as described in § 401.78 and apprenticeship training programs;

(2) The expansion of vocational education activities necessary to meet student needs and the introduction of new vocational education programs, particularly in economically depressed urban and rural areas of the State;

(3) The introduction of new vocational education programs, particularly in economically depressed urban and rural areas;

(4) The creation or expansion of programs to train workers in skilled occupations needed to revitalize businesses and industries or to promote the entry of new businesses and industries into a State or community;

(5) Exemplary and innovative programs which stress new and emerging technologies and which are designed to strengthen vocational education services and activities;

(6) The improvement and expansion of postsecondary and adult vocational education programs and related services for out-of-school youth and adults, which may include upgrading the skills of—

(i) Employed workers;

(ii) Workers who are unemployed or threatened with unemployment as a result of technological change or industrial dislocation;

(iii) Workers with limited English proficiency; and

(iv) Displaced homemakers and single heads of households;

(7) The improvement and expansion of career counseling and guidance projects, services, or activities authorized by §§ 401.76 and 401.105;

(8) The expansion and improvement of programs at area vocational education schools;

(9) The conduct of special courses and teaching strategies designed to teach the fundamental principles of mathematics and science through practical applications which are an integral part of the student's prevocational or vocational program;

(10) The activities of vocational student organizations that are carried out as an integral part of the secondary and postsecondary instructional program;

(11) Prevocational programs;

(12) Modern industrial arts programs and agricultural arts programs;

(13) The provision of vocational education through arrangements with private vocational education institutions, private postsecondary educational institutions, and employers if these institutions or employers—

(i)(A) Can make a significant contribution to attaining the objectives of the Act; and

(B) Can provide substantially equivalent preparation at a lesser cost; or

(ii) Can provide equipment or services not available in public institutions; and

(14) The improvement or expansion of any other vocational education activities authorized under the Vocational Education Opportunities Program that would accomplish the purposes described in § 401.59.

(b) A State may also use funds to accomplish the purposes described in § 401.59, by supporting—

(1) Technical assistance and research;

(2) Programs relating to curriculum development in vocational education within the State, including the application of basic skill training;

(3) The assignment of personnel to work with employers and eligible recipients in a region in order to coordinate efforts to ensure that vocational programs are responsive to the labor market and supportive of apprenticeship training programs;

(4) The acquisition of equipment and the renovation of facilities necessary to improve or expand vocational education programs within the State;

(5) The provision of stipends for students entering or already enrolled in vocational education programs and who have acute economic needs which cannot be met under work-study programs. The amount of a stipend may be the larger of either the minimum wage prescribed by State or local law, or the minimum hourly wage set under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;

(6) Placement services for students who have successfully completed vocational education programs, including special services for handicapped individuals and cooperative efforts with rehabilitation programs;

(7) Day care services for children of students in secondary and postsecondary vocational education programs;

(8) The construction of area vocational education school facilities in areas having a demonstrated need for those facilities;

(9) The acquisition of high-technology equipment for vocational education programs; and

(10) The acquisition and operation of communications and telecommunications equipment for vocational education programs.

(c) A State shall use funds under this program for subgrants to support inservice and preservice training designed to increase the competence of vocational education teachers, counselors, and administrators, with special emphasis on the integration of handicapped and disadvantaged students in regular courses of vocational education.

(Authority: Sec. 251; 20 U.S.C. 2341)

[50 FR 33235, Aug. 16, 1985; 50 FR 38802, Sept. 25, 1985]

§ 401.61 How may a State distribute funds under the Vocational Education Improvement, Innovation, and Expansion Program?

(a)(1) Subject to the requirements of §§ 401.59 and 401.60, a State may use funds under the Vocational Education Improvement, Innovation, and Expansion Program in the manner best suited to carry out the purposes of the Act as implemented through the State vocational education program in that State.

(2) Any project assisted under the Vocational Education Improvement, Innovation, and Expansion Program must be of sufficient size, scope, and quality to give reasonable promise of meeting the vocational education needs of students involved in the project.

(b) In addition to eligible recipients, a State may use funds under the Vocational Education Improvement, Innovation, and Expansion Program to make awards to community-based organizations of demonstrated effectiveness—

(1) In areas of the State in which there is an absence of sufficient vocational education facilities;

(2) In areas of the State in which the vocational education programs do not adequately address the needs of disadvantaged students; or

(3) Wherever the community-based organization can better serve disadvantaged students.

(Authority: Sec. 252; 20 U.S.C. 2342)

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

§ 401.70 What are the Special Programs?

(a) The Special Programs authorized by Title III of the Act are the—

(1) State Assistance for Vocational Education Support Programs by Community-Based Organizations;

(2) Consumer and Homemaking Education Program;

(3) Adult Training, Retraining, and Employment Development Program;

(4) Comprehensive Career Guidance and Counseling Program; and

(5) Industry-Education Partnership for Training in High-Technology Occupations Program.

(b) From the amount appropriated under section 3(b) of the Act for each program in paragraph (a) of this section, the Secretary makes a separate allotment to each State.

(Authority: Sec. 3(b), Title III; 20 U.S.C. 2302(b), 2351 *et seq.*)

§ 401.71 What activities does the Secretary support under the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) The State shall provide, in accordance with its State plan, and from its allotment for this program, financial assistance to joint projects of eligible recipients and community-based organizations within the State that provide the following special vocational education services and activities:

(1) Outreach programs that facilitate the entrance of youth into a program of transitional services and subsequent entrance into vocational education, employment, or other education and training.

(2) Transitional services such as attitudinal and motivational prevocational training programs.

(3) Prevocational educational preparation and basic skills development, conducted in cooperation with business concerns.

(4) Special prevocational preparations programs targeted to inner-city youth, non-English speaking youth, Appalachian youth, and the youth of other urban and rural areas having a high density of poverty who need special prevocational education programs.

(5) Career intern programs.

(6) The assessment of students' needs in relation to vocational education and jobs.

(7) Guidance and counseling to assist students with occupational choices and with the selection of a vocational education program.

(b) Handicapped individuals who are educationally or economically disadvantaged may participate in projects under this program.

(Authority: Secs. 302, 521(5); 20 U.S.C. 2352, 2471(5))

§ 401.72 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) Each community-based organization and eligible recipient that desire to participate in this program shall jointly prepare and submit an application to the State board at the time and in the manner established by the State board.

(b) The State board may also establish requirements relating to the contents of the application, except that each application must contain—

(1) An agreement among the community-based organization and the eligible recipients in the area to be served, which includes the designation of one or more fiscal agents for the project;

(2) A description of how the funds will be used, together with evaluation criteria to be applied to the project;

(3) Assurances that the community-based organization will give special consideration to the needs of severly economically and educationally disadvantaged youth, ages sixteen through twenty-one, inclusive;

(4) Assurances that business concerns will be involved, as appropriate, in services and activities for which assistance is sought;

(5) A description of the efforts the community-based organization will make to collaborate with the eligible recipients participating in the joint project;

(6) A description of the manner in which the services and activities for which assistance is sought will serve to enhance the enrollment of severely economically and educationally disadvantaged youth into the vocational education programs; and

(7) Assurances that the projects conducted by the community-based organization will conform to the applicable standards of performance and measures of effectiveness required of vocational education programs in the State.

(Approved by the Office of Management and Budget under control number 1830-0030)

(Authority: Sec. 301; 20 U.S.C. 2351)

§ 401.73 What activities does the Secretary support under the Consumer and Homemaking Education Program?

(a) The State shall conduct, in accordance with its State plan, and from its allotment for this program, consumer and homemaking education projects that may include—

(1) Instructional projects, services, and activities that prepare youth and adults for the occupation of homemaking;

(2) Instruction in the areas of—

(i) Food and nutrition;

(ii) Consumer education;

(iii) Family living and parenthood education;

(iv) Child development and guidance;

(v) Housing and home management, including resource management; and

(vi) Clothing and textiles.

(b) The State shall use the funds described in paragraph (a) of this section to support projects, services, and activities—

(1) In economically depressed areas;

(2) That encourage the participation of traditionally underserved populations;

(3) That encourage the elimination of sex bias and sex stereotyping;

(4) That improve, expand, and update consumer and homemaking education programs, especially those that specifically address needs described in paragraphs (b) (1), (2), and (3) of this section; and

(5) That address priorities and emerging concerns at the local, State, and national levels.

(c) The State may use the funds described in paragraph (a) of this section for—

(1) Program development and the improvement of instruction and curricula relating to—

(i) Managing individual and family resources;

(ii) Making consumer choices;

(iii) Managing home and work responsibilities;

(iv) Improving responses to individual and family crises;

(v) Strengthening parenting skills;

(vi) Assisting aged and handicapped individuals;

(vii) Improving nutrition;

(viii) Conserving limited resources;

(ix) Understanding the impact of new technology on life and work;

(x) Applying consumer and homemaking education skills to jobs and careers; and

(xi) Other needs as determined by the State; and

(2) Support services and activities designed to ensure the quality and effectiveness of programs, including—

(i) The demonstration of innovative and exemplary projects;

(ii) Community outreach to underserved populations;

(iii) The application of academic skills (such as reading, writing, mathematics, and science) through consumer and homemaking education programs;

(iv) Curriculum development;

(v) Research;

(vi) Program evaluation;

(vii) The development of instructional materials;

(viii) Teacher education;

(ix) The upgrading of equipment;

(x) Teacher supervision; and

(xi) State leadership, including activities of student organizations; and

(xii) State administration, subject to § 401.102(c).

(Authority: Secs. 311, 312(a), (b); 20 U.S.C. 2361, 2362(a), (b))

[50 FR 33235, Aug. 16, 1985, as amended at 51 FR 25493, July 14, 1986]

§ 401.74 What are the purposes of the Adult Training, Retraining, and Employment Development Program?

The purposes of the Adult Training, Retraining, and Employment Development Program are—

(a) To provide financial assistance to the States to enable them to expand and improve vocational education programs designed to meet urgent needs for training, retraining, and employment development of adults who have completed or left high school and are preparing to enter or have entered the labor market in order to equip adults with the competencies and skills required for productive employment; and

(b) To ensure that those programs are relevant to the labor market needs and accessible to all segments of the population, including women, minorities, handicapped individuals, individuals with limited English proficiency, workers fifty-five and older, and economically disadvantaged individuals.

(Authority: Sec. 321(b); 20 U.S.C. 2371(b))

§ 401.75 What activities does the Secretary support under the Adult Training, Retraining, and Employment Development Program?

The State shall conduct, in accordance with its State plan, and from its allotment for this program, the following adult training, retraining, and employment development projects, services, and activities:

(a) Vocational education and employment development projects, services, and activities that are authorized under the basic State grant and are designed to meet the needs of—

(1) Individuals who have graduated from or left high school and who need additional vocational education for entry into the labor force;

(2) Unemployed individuals who require training to obtain employment or increase their employability;

(3) Employed individuals who require retraining to retain their jobs, or who need training to upgrade their skills to qualify for higher paid or more dependable employment;

(4) Displaced homemakers and single heads of households who are entering or re-entering the labor force;

(5) Employers who require assistance in training individuals for new employment opportunities or in retraining employees in new skills required by changes in technology, products, or processes; and

(6) Workers fifty-five and older.

(b) Short term retraining projects designed to upgrade or update skills in accordance with changed work requirements.

(c) Education and training projects designed cooperatively with employers, such as—

(1) Institutional and work-site programs, including apprenticeship training programs (or combinations of these programs) especially tailored—

(i) To the needs of an industry or group of industries for skilled workers, technicians, or managers; or

(ii) To assist the existing work force or that industry or group of industries to adjust to changes in technology or work requirements; and

(2) Quick-start, customized training—

(i) For workers in new and expanding industries; or

(ii) To place workers in jobs that are difficult to fill because of a shortage of workers with the requisite skills.

(d) In order to serve more effectively the individuals described in paragraph (a) of this section, build more effective linkages between—

(1) Vocational education programs and private sector employers, through a variety of programs including programs in which secondary school students are employed on a part-time basis as registered apprentices, with a transition to full-time apprenticeships upon graduation; and

(2) Eligible recipients and economic development agencies and other public and private agencies providing job training and employment services.

(e) Cooperative education programs, between public and private sector employers and economic development agencies, including seminars in institutional or work-site settings designed to improve management and increase productivity.

(f) Entrepreneurship training programs that assist individuals in the establishment, management, and operation of small business enterprises.

(g) Recruitment, job search assistance, counseling, remedial services, and information and outreach programs designed to encourage and assist males and females to take advantage of vocational education programs and services, with particular attention to reaching women, older workers, individuals with limited English proficiency, handicapped individuals, and disadvantaged individuals.

(h) Curriculum development, acquisition of instructional equipment and materials, personnel training, pilot projects, and additional, related services and activities required to carry out effectively the Adult Training, Retraining, and Employment Development Program.

(i) The costs of serving adults in other vocational education programs, including paying the costs of instruction, or the costs of keeping school facilities open longer.

(j) Related instruction for apprentices in apprenticeship training programs as defined in 34 CFR 400.4(b).

(Authority: Sec. 322(b)(1); 20 U.S.C. 2372(b)(1))

§ 401.76 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Program?

(a) The State shall conduct, in accordance with its State plan and from its allotment for this program, career guidance and counseling projects, services, and activities that are—

(1) Organized and administered by certified counselors; and

(2) Designed to improve, expand, and extend career guidance and counseling programs to meet the career development, vocational education, and employment needs of vocational education students and potential students.

(b) The purposes of the projects, services, and activities described in paragraph (a) of this section must be to—

(1) Assist individuals to—

(i) Acquire self-assessment, career planning, career decisionmaking, and employability skills;

(ii) Make the transition from education and training to work;

(iii) Maintain the marketability of their current job skills in established occupations;

(iv) Develop new skills to move away from declining occupational fields and enter new and emerging fields in high-technology areas and fields experiencing skill shortages;

(v) Develop mid-career job search skills and to clarify career goals; and

(vi) Obtain and use information on financial assistance for postsecondary and vocational education and job training; and

(2)(i) Encourage the elimination of sex, age, handicapping conditions, and race bias and stereotyping;

(ii) Provide for community outreach;

(iii) Enlist the collaboration of the family, the community, business, industry, and labor; and

(iv) Be accessible to all segments of the population, including women, minorities, handicapped individuals, and the economically disadvantaged.

(c) The projects, services, and activities described in paragraph (a) of this section must consist of—

(1) Instructional activities and other services at all educational levels to help students develop the skills described in paragraph (b)(1) of this section;

(2) Services and activities designed to ensure the quality and effectiveness of career guidance and conseling projects, such as—

(i) Counselor education, including the education of counselors working with individuals with limited English proficiency;

(ii) Training support personnel;

(iii) Curriculum development;

(iv) Research and demonstration projects;

(v) Experimental projects;

(vi) The development of instructional materials;

(vii) The acquisition of equipment;

(viii) State and local leadership; and

(ix) State and local administration, including supervision, subject to §§ 401.93(b) and 401.105(c);

(3) Projects that provide opportunities for counselors to obtain firsthand experience in business and industry; and

(4) Projects that provide students with an opportunity to become acquainted with business, industry, the labor market, and training opportunities, including secondary educational programs that—

(i) Have at least one characteristic of an apprenticeable occupation as recognized by the Department of Labor or the State Apprenticeship Agency, in accordance with the National Apprenticeship Act;

(ii) Are conducted in concert with local business, industry, labor, and other appropriate apprenticeship training entities; and

(iii) Are designed to prepare participants for an apprenticeable occupation or provide information concerning apprenticeable occupations and their prerequisites.

(Authority: Sec. 332 (a), (b); 20 U.S.C. 2382 (a), (b))

[50 FR 33235, Aug. 16, 1985, as amended at 51 FR 25493, July 14, 1986]

§ 401.77 What are the purposes of the Industry-Education Partnership for Training in High-Technology Occupations Program?

The purposes of the Industry-Education Partnership for Training in High-Technology Occupations Program are to—

(a) Provide incentives for business and industry and the vocational education community to develop programs to train the skilled workers needed to produce, install, operate, and maintain high-technology equipment, systems, and processes; and

(b) Ensure that those programs are relevant to the labor market and accessible to all segments of the population, including women, minorities, handicapped individuals, and economically disadvantaged individuals.

(Authority: Sec. 341(b); 20 U.S.C. 2391(b))

§ 401.78 What activities does the Secretary support under the Industry-Education Partnership for Training in High-Technology Occupations Program?

The State shall, in accordance with the State plan, under § 401.19(a) (20) through (22), and from its allotment for this program, establish and operate projects, services, and activities including—

(a) Necessary administrative costs of the State board and of eligible recipients associated with the establishment and operation of projects;

(b) Training and retraining of instructional and guidance personnel;

(c) Curriculum development and the development or acquisition of instructional and guidance equipment and materials;

(d) The acquisition and operation of communications, telecommunications, and other high-technology equipment; and

(e) Other activities authorized under the Special Programs that are essential to the successful establishment and operation of projects, services and activities under the Industry-Education Partnership for Training in High-Technology Occupations Program, including activities and related services to ensure access of women, minorities, handicapped individuals, and economically disadvantaged individuals.

(Authority: Sec. 343(a); 20 U.S.C. 2393(a))

§ 401.79 What are the special considerations under the Industry-Education Partnership for Training in High-Technology Occupations Programs?

The State board, in approving projects, services, and activities under the Industry-Education Partnership for Training in High-Technology Occupations Program, shall give special consideration to the following:

(a) The level and degree of business and industry participation in the development and operation of the project.

(b) The current and projected demand within the State or relevant labor market area for workers with the level and type of skills the project is designed to produce.

(c) The overall quality of the proposal, with particular emphasis on the probability that prospective trainees will successfully complete the program and the capability of the eligible recipient, with assistance from participating business or industry, to provide high quality training for skilled workers and technicians in high technology.

(d) The commitment to serve all segments of the population, including women, minorities, handicapped individuals, and economically disadvantaged individuals, as demonstrated by the applicant's special efforts to provide outreach, information, and counseling, and by the provision of remedial instruction and other assistance.

(Authority: Sec. 343(b); 20 U.S.C. 2393(b))

[50 FR 33235, Aug. 16, 1985; 50 FR 38802, Sept. 25, 1985]

§ 401.80 What additional fiscal requirements apply to the Industry-Education Partnership for Training in High-Technology Occupations Programs?

(a)(1) The business and industrial share of the costs required by § 401.19(a)(21) may be in the form of either expenditures or the fair market value of in-kind contributions such as facilities, overhead, personnel, and equipment.

(2) The State shall use equal amounts from its allotment under this program and from its basic State grant allotment to provide the Federal share of the cost of projects services and activities under this program.

(3) If an eligible recipient demonstrates, to the satisfaction of the State board, that it is incapable of providing all or a part of the non-Federal portion of the costs of projects, services, and activities under this program, as required by §§ 401.19(a) (20) through (22) and 401.78, the State board may use funds under the Vocational Education Improvement, Innovation, and Expansion Program, authorized by § 401.59, or funds available from State sources, to replace the shortfall in the non-Federal portion.

(b) A State may use no more than a total of ten percent of its allotment under this program for the first year this program is implemented, and a total of five percent of its allotment for each succeeding year, for the administration of this program by both the State and eligible recipients.

(Authority: Secs. 342(c), 343(c); 20 U.S.C. 2392(c), 2393(c))

Subpart G—What Conditions Must the State Meet Under the State Vocational Education Program?

§ 401.90 How does a State reserve funds under the basic State grant?

From its allotment under the basic State grant program, authorized by Title II of the Act, a State shall reserve—

(a) The amount of funds for State administration described in § 401.91; and

(b) From the remainder—

(1) Fifty-seven percent for the Vocational Education Opportunities Program; and

(2) Forty-three percent for the Vocational Education Improvement, Innovation, and Expansion Program.

(Authority: Sec. 102(a); 20 U.S.C. 2312(a))

§ 401.91 How does a State reserve funds under the basic State grant for State administration?

(a) A State shall reserve no more than seven percent of its allotment, subject to paragraph (b) of this section, under the basic State grant program for State administration of the State plan.

(b)(1) From the amount reserved for State administration under paragraph (a) of this section, a State shall reserve the amount it needs to comply with § 401.13, but not less than $60,000.

(2) If the amount reserved under paragraph (b)(1) of this section exceeds one percent of the State's allotment under the basic State grant program, a State may reserve from that allotment an additional amount for State administration which is in excess of the seven percent permitted under paragraph (a) of this section and which equals the amount of that excess.

(c) For the purpose of § 401.19(a)(4), regarding the requirement that a State distribute at least eighty percent of its total basic State grant allotment to eligible recipients, a State shall consider the funds for State administration under paragraphs (a) and (b) of this section as part of the State's portion (the portion that may not exceed twenty percent) of the State's allotment.

Example: The allotment of State X under the basic State grant program is $20,000,000. State X determines that $220,000 is needed for it to comply with § 401.13. State X is authorized to reserve seven percent of its basic State grant allotment, or $1,400,000, for State administration. However, because the amount needed to comply with § 401.13 exceeds one percent of its allotment by $20,000, State X may reserve an additional $20,000 for State administration. (For example, this additional $20,000 may be taken from the funds otherwise reserved for the Vocational Education Improvement, Innovation, and Expansion Program.) Therefore, the total amount available for State administration is $1,420,000. Assuming the State reserves twenty percent of its allotment for State-wide activities under § 401.19(a)(4), or $4,000,000, the State must count the $1,420,000 for State administration against that $4,000,000.

(Authority: Secs. 102(b), 113(b)(4), 251(a)(16); 20 U.S.C. 2312(b), 2323(b)(4), 2341(a)(16))

[50 FR 33235, Aug. 16, 1985; 50 FR 38802, Sept. 25, 1985]

§ 401.92 How does a State reserve funds under the Vocational Education Opportunities Program?

From the amount reserved for the Vocational Education Opportunities Program under § 401.90(b)(1), a State shall reserve the following amounts—

(a) Ten percent of the total amount described in § 401.90(b) for handicapped individuals;

(b) Twenty-two percent of the total amount described in § 401.90(b) for disadvantaged individuals;

(c) Twelve percent of the total amount described in § 401.90(b) for adults who are in need of training and retraining;

(d) Eight and one-half percent of the total amount described in § 401.90(b) for individuals who are single parents, homemakers, or single pregnant women;

(e) Three and one-half percent of the total amount described in § 401.90(b) for individuals who are participants in programs designed to eliminate sex bias and stereotyping in vocational education; and

(f) One percent of the total amount described in § 401.90(b) for criminal offenders who are in correctional institutions.

Example: Assuming the same facts in the example under § 401.91, State X has available for programs $18,580,000 under the basic State grant after reserving $1,420,000 for State administration. Of this $18,580,000, $7,989,400 ($18,580,000×43%) is reserved for the Vocational Education Improvement, Innovation, and Expansion Program and $10,590,600 ($18,580,000×57%) for the Vocational Education Opportunities Program. Under the latter program $1,858,000 ($18,580,000×10%) is reserved for handicapped individuals; $4,087,600 ($18,580,000×22%) is reserved for disadvantaged individuals; $2,229,600 ($18,580,000×12%) is reserved for adults who are in need of training and retraining $1,579,300 ($18,580,000×8.5%) is reserved for individuals who are single parents homemakers, or single pregnant women $650,300 ($18,580,000×3.5%) is reserved for individuals who are participating in programs designed to eliminate sex bias and sex stereotyping in vocational education; and $185,800 ($18,580,000×1%) is reserved for criminal offenders who are in correctional institutions.

(Authority: 20 U.S.C. 2331, 2332)

[50 FR 33235, Aug. 16, 1985, as amended at 53 FR 35259, Sept. 12, 1988]

§ 401.93 What are the administrative cost requirements under the State Vocational Education Program?

(a) *Basic State grant.* To administer—

(1) Its State plan, including Special Programs, a State shall use the amount reserved under § 401.91; and

(2) Its projects, services, and activities under the basic State grant, an eligible recipient may use no more than the amount of funds from each award that is necessary and reasonable for the proper and efficient administration of the projects, services, and activities for which the award is made.

(b) *Special Programs.* To administer—

(1) Each of the Special Programs under its State plan (other than the Consumer and Homemaking Education Program, the Comprehensive Career Guidance and Counseling Program, and the Industry-Education Partnership for Training in High-Technology Occupations Program) a State may use, in addition to funds reserved under § 401.91, no more than the amount of funds from its allotment for each program that is necessary and reasonable for the proper and efficient State administration of that program; and

(2) Its projects, services, and activities supported by an award under one of the Special Programs, other than the Industry-Education Partnership for Training in High-Technology Occupations Program, an eligible recipient may use no more than the amount of funds that is necessary and reasonable for the proper and efficient administration of the projects, services, and activities for which the award is made.

(Authority: Sec. 102(b), Title II, Title III, Sec. 502(a)(1), (2); 20 U.S.C. 2312(b), 2331-2342, 2351-2393, 2462(a)(1), (2))

[50 FR 33235, Aug. 16, 1985, as amended at 51 FR 25494, July 14, 1986]

§ 401.94 What are the cost-sharing requirements under the State Vocational Education Program?

(a) The Secretary pays no more than the Federal share of costs under the State Vocational Education Program for each fiscal year.

(b) For the purpose of paragraph (a) of this section—

(1) Under the basic State grant, the Federal share of the cost of—

(i) State administration, except under paragraph (b)(4) of this section, is fifty percent;

(ii) The administration of projects, services, and activities by an eligible recipient, is fifty percent;

(iii) Projects, services, and activities for handicapped individuals, disadvantaged individuals, and adults who are in need of training and retraining under the Vocational Education Opportunities Program, is fifty percent;

(iv) Projects, services, and activities for individuals who are single parents, homemakers, or single pregnant women, individuals who are participants in programs designed to eliminate sex bias and stereotyping in vocational education, and criminal offenders who are in correctional institutions under the Vocational Education Opportunities Program, is one hundred percent; and

(v) Projects, services, and activities under the Vocational Education Improvement, Innovation, and Expansion Program, is fifty percent;

(2) Under the Special Programs, the Federal share of the cost of—

(i) State administration, is fifty percent;

(ii) The administration of projects, services, and activities by an eligible recipient, is fifty percent; and

(iii) Projects, services, and activities, unless otherwise indicated in the regulations in this part, is one hundred percent;

(3) The Federal share of the cost of the State council on vocational education is one hundred percent; and

(4) The Federal share of the cost of complying with § 401.13 of this part is one hundred percent.

(c) Unless otherwise provided by the regulations in this part, a State or eligible recipient may not use the value of in-kind contributions to satisfy a cost-sharing requirement under the State Vocational Education Program.

Example: Assuming the same facts in the example under § 401.91, the Secretary pays one hundred percent of the $220,000 the State needs to comply with § 401.13. The State would be required to match, dollar-for-dollar, the remaining $1,200,000 ($1,420,000 minus $220,000) for State administration of the basic State grant portion of the State plan.

(Authority: 20 U.S.C. 2331, 2462(a); House Report No. 98-1129, 98th Cong., 2d Sess. 98 (1984))

[50 FR 33235, Aug. 16, 1985; 50 FR 38802, Sept. 25, 1985; 53 FR 35259, Sept. 12, 1988]

§ 401.95 How does a State allocate funds for handicapped individuals under the Vocational Education Opportunities Program?

A State shall allocate funds reserved for handicapped individuals in accordance with § 401.92(a) to participating eligible recipients according to the following formula:

(a) Fifty percent of the amount reserved must be allocated to participating eligible recipients on the basis of the relative number of economically disadvantaged individuals enrolled in those eligible recipients in the program year preceding the program year in which the allocation is made, compared to the total number of those individuals enrolled in all of those eligible recipients within the State in that preceding program year.

(b) Fifty percent of the amount reserved must be allocated to participating eligible recipients on the basis of the relative number of handicapped students served in vocational education programs by those eligible recipients in the program year preceding the program year in which the allocation is made, compared to the total number of those individuals served in vocational education programs by all of those eligible recipients within the State in that preceding program year.

Example: Assume that eligible recipient X enrolls 100 economically disadvantaged individuals and serves in its vocational education program 50 handicapped individuals. Assume further that among all participating eligible recipients, there are 1000 of those persons enrolled and 400 of those individuals are served, respectively. In the succeeding program year, eligible recipient X is eligible to receive under the Vocational Education Opportunities Program an amount for handicapped individuals equal to 1/10 (or 100 economically disadvantaged individuals enrolled by eligible recipient X/1000 economically disadvantaged individuals enrolled in the State) of ½ of the amount reserved for such individuals under § 401.92(a) and ⅛ (or 50 handicapped individuals served by eligible recipient X/400 handicapped individuals served in the State) of ½ of the same amount.

(Authority: Sec. 203(a)(1); 20 U.S.C. 2333(a)(1))

§ 401.96 How does a State allocate funds for disadvantaged individuals under the Vocational Education Opportunities Program?

(a) A State shall allocate funds reserved for disadvantaged individuals in accordance with § 401.92(b) to participating eligible recipients according to the following formula:

(1) Fifty percent of the amount reserved must be allocated to participating eligible recipients on the basis of the relative number of economically disadvantaged individuals enrolled in those eligible recipients in the program year preceding the program year in which the allocation is made, compared to the total number of those individuals enrolled in all of those eligible recipients within the State in that preceding program year.

(2) Fifty percent of the amount reserved must be allocated to participating eligible recipients on the basis of the relative number of disadvantaged individuals and individuals with limited English proficiency served in vocational education programs by those eligible recipients in the program year preceding the program year in which the allocation is made, compared to the total number of those individuals served in vocational education programs by all of those eligible recipients within the State in that preceding program year.

(b) A State shall ensure that funds allocated among participating eligible recipients under paragraph (a) of this section are used by each participating eligible recipient to provide vocational education services and activities for individuals with limited English proficiency at least in proportion to the number of individuals with limited English proficiency enrolled in vocational education in that eligible recipient in the program year preceding the program year in which the determination is made, compared to the total number of disadvantaged individuals, including individuals with limited English proficiency, so enrolled in the preceding program year.

Example: Assume that eligible recipient X enrolls 100 economically disadvantaged individuals and serves in its vocational education program 50 disadvantaged and limited English proficient individuals. Assume further that among all participating eligible recipients, there are 1000 of those persons enrolled and 400 of those individuals served, respectively. In the succeeding program year, eligible recipient X is eligible to receive under the Vocational Education Opportunities Program an amount for disadvantaged individuals equal to 1/10 (or 100 economically disadvantaged individuals enrolled in eligible recipient X/1000 economically disadvantaged individuals enrolled in the State) of ½ of the amount reserved for those individuals under § 401.92(b) and ½ (or 50 disadvantaged and limited English proficient individuals served by eligible recipient X/400 disadvantaged and limited English proficient individuals served in the State) of ½ of that same amount.

In addition to the assumptions made in the preceding paragraph, assume further that eligible recipient X enrolls 25 individuals with limited English proficiency in its vocational education program. In the succeeding program year, if eligible recipient X receives an award of $1,000 for disadvantaged individuals under the Vocational Education Opportunities Program, eligible recipient X must use $500 (or 25 individuals with limited English proficiency enrolled in eligible recipient X/50 disadvantaged and limited English proficient individuals enrolled in eligible recipient X times $1,000) for individuals with limited English proficiency.

(Authority: Sec. 203(a)(2), (3); 20 U.S.C. 2333(a)(2), (3))

[50 FR 33235, Aug. 16, 1985, as amended at 51 FR 25494, July 14, 1986]

§ 401.97 How does a State match funds for handicapped individuals and disadvantaged individuals under the Vocational Education Opportunities Program?

(a) A State shall provide the non-Federal share of the cost of projects, services, and activities for handicapped individuals and for disadvantaged individuals under the Vocational Education Opportunities Program equitably from State and local sources, except that the State shall provide the non-Federal share of the cost from State sources if the State board determines that an eligible recipient cannot reasonably be expected to provide for these costs from local sources.

(b) Contributions from local sources towards the non-Federal share of the costs of projects, services, and activities for disadvantaged individuals under the Vocational Education Opportunities Program must be in cash or, to the extent the eligible recipient determines that it cannot otherwise provide the contribution, in the form of in-kind contributions, fairly valued, including facilities, overhead, personnel, equipment, and services.

(Authority: Sec. 502(b): 20 U.S.C. 2462(b))

[51 FR 25494, July 14, 1986]

§ 401.98 How does an eligible recipient use community-based organizations under the Vocational Education Opportunities Program?

Each local educational agency or other eligible recipient shall, to the extent feasible, use community-based organizations of demonstrated effectiveness to carry out projects, services, and activities under the Vocational Education Opportunities Program in areas of the State in which—

(a) There is an absence of sufficient vocational education facilities;

(b) Vocational education programs do not adequately address the needs of disadvantaged students; or

(c) The eligible recipient determines that the community-based organization can better serve disadvantaged students.

(Authority: Sec. 203(a)(4); 20 U.S.C. 2333(a)(4))

§ 401.99 What kinds of joint projects are authorized under the Vocational Education Opportunities Program?

(a) A State board may encourage any eligible recipient within the State that is eligible under the regulations in this part, or under the State plan, to receive an award of no more than $1,000 for any program year under the Vocational Education Opportunities Program, to operate its project, services, or activities jointly with another eligible recipient.

(b) Each local educational agency may use funds allocated under § 401.95 for joint projects with one or more other local educational agencies.

(Authority: Sec. 203 (a)(5), (b); 20 U.S.C. 2333 (a)(5), (b))

§ 401.100 How does a State distribute funds not reserved for handicapped or disadvantaged individuals under the Vocational Education Opportunities Program?

The State board shall establish the State's criteria for distributing funds under the Vocational Education Opportunities Program (other than those funds reserved for handicapped or disadvantaged individuals under § 401.92 (a) and (b)) to eligible recipients and, under § 401.55(c), to community-based organizations. The State's criteria must be designed to accomplish the purposes of the Vocational Education Opportunities Program.

(Authority: Sec. 203(c); 20 U.S.C. 2333(c))

§ 401.101 What are the "equal access" provisions that apply to handicapped individuals and disadvantaged individuals under the Vocational Education Opportunities Program?

(a) Each local educational agency that receives an allocation of funds under §§ 401.95 and 401.96 shall use those funds to provide information to handicapped and disadvantaged students and their parents concerning the opportunities available in vocational education and the requirements for eligibility for enrollment in vocational education programs, at least one year before the students enter the grade level in which vocational education programs are first generally available in the State, but in no case later than the beginning of the ninth grade.

(b)(1) Each local educational agency described in paragraph (a) of this section shall provide to each handicapped or disadvantaged student that enrolls in a vocational education program—

(i) An assessment of the interests, abilities, and special needs of that student with respect to completing successfully the vocational education program;

(ii) Special services, including adaptation of curriculum, instruction, equipment, and facilities, designed to meet the needs established under paragraph (b)(1)(i) of this section;

(iii) Guidance, counseling, and career development activities conducted by professionally trained counselors who are associated with the provision of those special services; and

(iv) Counseling services designed to facilitate the transition from school to post-school employment and career opportunities.

(2) Consistent with the regulations in this part, a local educational agency may use the funds described in paragraph (a) of this section to pay for the cost of services and activities required by paragraph (b)(1) of this section.

(Authority: Sec. 204 (b), (c); 20 U.S.C. 2334 (b), (c))

§ 401.102 How must funds be used under the Consumer and Homemaking Education Program?

(a) A State shall use not less than one-third of its allotment under the Consumer and Homemaking Education Program in economically depressed areas or areas with high rates of unemployment for projects, services, and activities designed to assist consumers, and to help improve home environments and the quality of family life.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and preparation in home economics education.

(c) A State may use, in addition to funds reserved under § 401.91, not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: Secs. 312(c), 313; 20 U.S.C. 2362(c), 2363)

[50 FR 33235, Aug. 16, 1985, as amended at 51 FR 25494, July 14, 1986]

§ 401.103 How must a State use funds under the Adult Training, Retraining, and Employment Development Program?

(a) In making a grant to a State, the Secretary informs the State what percentage of its allotment under the Adult Training, Retraining, and Employment Development Program must be used for projects, services, and activities under that program for individuals who are single parents or homemakers.

(b) The full-time person required by § 401.13 may administer the projects, services, and activities supported with the funds described in paragraph (a) of this section.

(Authority: Secs. 3(b)(3)(B), 111(b); 20 U.S.C. 2302(b)(3)(B), 2321(b))

§ 401.104 How must a State coordinate programs under the Adult Training, Retraining, and Employment Development Program?

(a) The State board shall consult with the State job training coordinating council established under the JTPA so that the council takes account of projects under the Adult Training, Retraining, and Employment Development Program when it formulates recommendations to the Governor, for the Governor's coordination and special services plan required by section 121 of the JTPA.

(b) In order to achieve the most effective use of all Federal funds through programs that complement and supplement each other, and, to the extent feasible, provide an ongoing and integrated program of training and services for workers in need of that assistance, the State board shall adopt the procedures it considers necessary to encourage coordination between eligible recipients receiving funds under the Adult Training, Retraining, and Employment Development Program and the appropriate administrative entity established under the JTPA, in conducting their respective programs.

(Authority: Sec. 323(b); 20 U.S.C. 2373(b))

§ 401.105 How must funds be used under the Comprehensive Career Guidance and Counseling Program?

(a) A State shall use not less than twenty percent of its allotment under the Career Guidance and Counseling Program for projects, services, and activities designed to eliminate sex, age, and race bias and stereotyping under § 401.76(b)(2)(i) to ensure that projects, services, and activities under this program are accessible to all segments of the population, including women, disadvantaged individuals, handicapped individuals, individuals with limited English proficiency, and minorities.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and knowledge in guidance and counseling.

(c) A State may use, in addition to funds reserved under § 401.91, not more than six percent of its allotment under this program for State administration of projects services, and activities under this program.

(Authority: Secs. 332(c), 333; 20 U.S.C. 2382(c), 2383)

[50 FR 33235, Aug. 16, 1985, as amended at 51 FR 25494, July 14, 1986]

Subpart H—What are the Administrative Responsibilities of a State Under the State Vocational Education Program?

§ 401.110 What are a State's responsibilities regarding the Vocational Education Data System?

A State that receives funds under the Act shall cooperate with the Secretary in supplying the information the Secretary requires, in the form the Secretary requires, and shall comply in its reports with the Vocational Education Data System developed by the Secretary under section 421 of the Act.

(Authority: Sec. 421(b)(2); 20 U.S.C. 2421(b))

§ 401.111 What are a State's responsibilities regarding a State occupational information coordinating committee?

(a) A State that receives funds under the Act shall establish a State occupational information coordinating committee composed of representatives of the State board, the State employment security agency, the State economic development agency, the State job training coordinating council, and the agency administering the vocational rehabilitation program.

(b) With funds made available to it by the National Occupational Information Coordinating Committee, the State occupational information coordinating committee shall—

(1) Implement an occupational information system in the State which will meet the common needs for the planning and operation of programs of the State board assisted under the Act and the programs of the administering agencies under the JTPA; and

(2) Use the occupational information system to implement a career information delivery system.

(Authority: Sec. 422(b); 20 U.S.C. 2422(b))

§ 401.112 What are a State's audit responsibilities under the Act?

A State shall obtain financial and compliance audits of any funds which it receives under the Act, and shall make these audits public within the State on a timely basis. Each State shall comply with the audit requirements of the Single Audit Act of 1984 with respect to any of its fiscal years that begin after December 31, 1984.

(Approved by the Office of Management and Budget under control number 1830-0030)

(Authority: Sec. 505; 20 U.S.C. 2465; 31 U.S.C. 7501 *et seq.*)

§ 401.113 What are a State's responsibilities to the National Center for Research in Vocational Education?

A State shall forward to the National Center for Research in Vocational Education a copy of an abstract for each new research, curriculum development, or personnel development project it supports, and the final report on each project.

(Approved by the Office of Management and Budget under control number 1830-0011)

(Authority: Sec. 404(b)(6); 20 U.S.C. 2404(b)(6))

Subpart I—What are the Enforcement Procedures Under the State Vocational Education Program?

§ 401.120 What enforcement procedures may the Secretary use?

(a) In addition to using the enforcement procedures authorized by Part E of the General Education Provisions Act, the Secretary may withhold funds under the State Vocational Education Program in accordance with the provisions of section 504 of the Act. Hearings under section 504 of the Act are conducted by the Education Appeal Board.

(b)(1) The Secretary conducts any hearings held under section 453 of the General Education Provisions Act in connection with funds under the State Vocational Education Program in the State of the affected unit of local government or geographic area within the State.

(2) For the purposes of paragraph (b)(1) of this section—

(i) "Unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and

(ii) "Geographic area within a State" means a special purpose district or other region recognized for governmental purposes within that State which is not a unit of local government.

(Authority: Sec. 504 (a), (b), (d); 20 U.S.C. 1234, 2464 (a), (b), (d))

§ 401.121 How under the Act may an eligible recipient appeal a final action of a State board?

In accordance with the provisions of section 504(c) of the Act, an eligible recipient that is dissatisfied with the final action of the State board, or other appropriate State administering agency, with respect to the approval of its local application, may file a petition for the review of that action with the United States Court of Appeals for the circuit in which the State is located.

PART 407—BILINGUAL VOCATIONAL TRAINING PROGRAM

Subpart A—General

Sec.

407.1 What is the Bilingual Vocational Training Program?
407.2 Who is eligible to apply for assistance under this program?
407.3 What regulations apply to this program?
407.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

407.10 What types of projects may be funded?

Subpart C—How Does One Apply for a Grant?

407.20 What must an applicant include?

Subpart D—How Does the Secretary Make a Grant?

407.30 How does the Secretary evaluate an application?
407.31 What selection criteria does the Secretary use?
407.32 How does the Secretary select an application for funding?

AUTHORITY: Sec. 441(a) of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2441(a), as enacted by Pub. L. 98-524, unless otherwise noted.

SOURCE: 50 FR 33251, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 407.1 What is the Bilingual Vocational Training Program?

The Bilingual Vocational Training Program provides financial assistance for bilingual vocational education and training for individuals with limited English proficiency to prepare these individuals for jobs in recognized occupations and new and emerging occupations.

(Authority: Sec. 441(a)(1); 20 U.S.C. 2441(a)(1))

§ 407.2 Who is eligible to apply for assistance under this program?

(a) The following are eligible for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Local educational agencies (LEAs).

(3) Postsecondary educational institutions.

(4) Private nonprofit vocational training institutions.

(5) Other nonprofit organizations specially created to serve individuals who normally use a language other than English.

(b) Private for-profit agencies and organizations are eligible for contracts under this program.

(Authority: Sec. 441(a); 20 U.S.C. 2441(a))

§ 407.3 What regulations apply to this program?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Authority: Sec. 441(a); 20 U.S.C. 2441(a))

§ 407.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: Sec. 441(a); 20 U.S.C. 2441(a))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 407.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(1) Bilingual vocational training projects for individuals who have completed or left elementary or secondary school and who are available for education in a postsecondary educational institution;

(2) Bilingual vocational education and training projects for individuals who have already entered the labor market and who desire or need train-

ing or retraining to achieve year-round employment, adjust to changing manpower needs, expand their range of skills, or advance in employment; and

(3) Training allowances for participants in bilingual vocational training projects.

(b) Bilingual vocational training projects must include instruction in the English language to ensure that participants in that training will be equipped to pursue occupations in an English language environment.

(c) In the Commonwealth of Puerto Rico, the Bilingual Vocational Training Program may provide for the needs of students of limited Spanish proficiency.

(Authority: Sec. 441(a), (e)(2); 20 U.S.C. 2441(a), (e)(2))

Subpart C—How Does One Apply for a Grant?

§ 407.20 What must an application include?

(a) An application must—

(1) Provide that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(2) Describe a project of a size, scope, and design that will make a substantial contribution toward carrying out the purpose of this program; and

(3) Be submitted to the State board or agency designated or established under section 111 of the Act for review and comment, including comment on the relationship of the proposed project to the State's vocational education program.

(b) An applicant shall include any comments received under paragraph (a)(3) of this section with the application.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 441(d) (1), (2); 20 U.S.C. 2441(d) (1), (2))

Subpart D—How Does the Secretary Make a Grant?

§ 407.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 407.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 407.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved 15 points among the criteria in § 407.31.

(e) Prior to making an award, the Secretary consults with the State board designated or established under section 111 of the Act to ensure an equitable distribution of assistance among populations of individuals with limited English proficiency within the State.

(Authority: Sec. 441(a), (d)(5); 20 U.S.C. 2441(a), (d)(5))

§ 407.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application for specific information that shows the need for the proposed training in the local geographic area.

(2) The Secretary looks for information that shows—

(i) The need for the proposed project, including—

(A) The employment need to be met;

(B) How that employment need will be met; and

(C) Where appropriate, ongoing and planned activities in the community that pertain to that employment need; and

(ii) The relationship of the project to any appropriate economic development plan.

(b) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Program factors.* (10 points)

(1) The Secretary reviews each application for information that shows the applicant's understanding of key program factors.

(2) The Secretary looks for information that shows—

(i) An understanding of the key methodologies and techniques used in bilingual vocational training such as—

(A) Providing training and instruction in English and the native languages of the trainees;

(B) Providing job-related English-as-a-second language instruction;

(C) Coordinating job-related English-as-a-second language instruction with the occupational training; or

(D) Providing training and guidence to prepare trainees for working in an English language environment;

(ii) Procedures for recruiting persons with limited English proficiency who are in the greatest need for bilingual vocational training;

(iii) Procedures for evaluating the skills and needs of trainees;

(iv) An understanding of the importance of appropriate counseling and follow-up activities with former trainees;

(v) That the training will provide opportunities for employment in jobs that have potential for career advancement or opportunities for entrepreneurship; and

(vi) That the project will be coordinated with the State board or agency designated or established under section III of the Act.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows-

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(h) *Private sector involvement.* (5 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) Private sector involvement in the planning of the project; and

(ii) Private sector involvement in the operation of the project.

(i) *Employment opportunities.* (10 points)

The Secretary looks for information and documentation of the extent to which, upon the completion of their training under this program, more than 65 percent of the trainees will be employed in jobs (including military specialties) related to their training, or will be pursuing additional training related to their training under this program.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 441(a); 20 U.S.C. 2441(a))

[50 FR 33251, Aug. 16, 1985; 50 FR 38802, Sept. 25, 1985]

§ 407.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in § 407.31, and consulting with the appropriate State board under § 407.30(e), the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the equitable distribution of projects under this program within the affected State.

(Authority: Sec. 441(d)(5); 20 U.S.C. 2441(d)(5))

[50 FR 33251, Aug. 16, 1985; 50 FR 38802, Sept. 25, 1985]

PART 408—BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

Subpart A—General

Sec.

408.1 What is the Bilingual Vocational Instructor Training Program?
408.2 Who is eligible to apply for assistance under this program?
408.3 What regulations apply to this program?
408.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

408.10 What types of projects may be funded?

Subpart C—How Does One Apply for a Grant?

408.20 What must an application include?

Subpart D—How Does the Secretary Make a Grant?

408.30 How does the Secretary evaluate an application?
408.31 What selection criteria does the Secretary use?
408.32 How does the Secretary select an application for funding?

AUTHORITY: Sec. 441(b) of the Carl D. Perkins Vocational Education Act, 20 U.S.C.

2441(b), as enacted by Pub. L. 98-524, unless otherwise noted.

SOURCE: 50 FR 33253, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 408.1 What is the Bilingual Vocational Instructor Training Program?

The Bilingual Vocational Instructor Training Program provides financial assistance for conducting training for instructors of bilingual vocational education and training programs for individuals with limited English proficiency.

(Authority: Sec. 441(b)(1); 20 U.S.C. 2441(b)(1))

§ 408.2 Who is eligible to apply for assistance under this program?

(a) The following are eligible to apply for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Public and private nonprofit educational institutions.

(b) Private for-profit educational institutions are eligible for contracts under this program.

(Authority: Sec. 441(b)(1); 20 U.S.C. 2441(b)(1))

§ 408.3 What regulations apply to this program?

The following regulations apply to the Bilingual Vocational Instructor Training Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Authority: Sec. 441(b); 20 U.S.C. 2441(b))

§ 408.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: Sec. 441(b); 20 U.S.C. 2441(b))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 408.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(1) Preservice and inservice training for instructors, aides, counselors, or other ancillary personnel participating or preparing to participate in bilingual vocational training programs; and

(2) Fellowships and traineeships for individuals participating in preservice or inservice training.

(b) The Secretary does not make an award under this program unless the Secretary determines that the applicant has an ongoing vocational training program in the field in which participants will be trained and can provide instructors with adequate language capabilities in the language other than English to be used in the project.

(Authority: Sec. 441(b) (2), (3))

Subpart C—How Does One Apply for a Grant?

§ 408.20 What must an application include?

An application must—

(a) Provide that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(b) Describe the capabilities of the applicant, including vocational training or education courses offered by the applicant, accreditation, and any certification of courses by appropriate State agencies;

(c) Describe the qualifications of principal staff responsible for any project under the Bilingual Vocational Instructor Training Program;

(d) Describe minimum qualifications for trainees participating or preparing to participate in any project, and the selection process for these individuals;

(e) Contain the projected amount of the fellowships or traineeships, if any; and

(f) Contain sufficient information for the Secretary to make the determination required by § 403.10(b).

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 441(d)(1), (4); 20 U.S.C. 2441(d)(1)(4))

Subpart D—How Does the Secretary Make a Grant?

§ 408.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 408.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 408.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved 15 points among the criteria in § 408.31.

(e) Prior to making an award the Secretary consults with the State board designated or established under section 111 of the Act to ensure an equitable distribution of assistance among populations of individuals with limited English proficiency within the State.

(Authority: Sec. 441(b), (d)(5); 20 U.S.C. 2441(b), (d)(5))

§ 408.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application for specific information that shows the need for the proposed training in the local geographic area.

(2) In making this determination the Secretary looks for information that shows—

(i) The need for the proposed training;

(ii) Specifically how the need will be met;

(iii) Ongoing and planned activities in the community that pertain to the need, where appropriate.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 441(b); 20 U.S.C. 2441(b))

§ 408.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in § 408.31, and consulting with the appropriate State board under § 408.30(e), the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the equitable distribution of projects under this program within the affected State.

(Authority: Sec. 441(d)(5); 20 U.S.C. 2441(d)(5))

PART 409—BILINGUAL VOCATIONAL MATERIALS, METHODS, AND TECHNIQUES PROGRAM

Subpart A—General

Sec.
409.1 What is the Bilingual Vocational Materials, Methods, and Techniques Program?
409.2 Who is eligible to apply for assistance under this program?
409.3 What regulations apply to this program?
409.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

409.10 What types of projects may be funded?
409.11 How does the Secretary establish priorities for this program?

Subpart C—How Does One Apply for a Grant?

409.20 What must an application include?

Subpart D—How Does the Secretary Make a Grant?

409.30 How does the Secretary evaluate an application?
409.31 What selection criteria does the Secretary use?

AUTHORITY: Sec. 441(c) of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2441(c), as enacted by Pub. L. 98-524, unless otherwise noted.

SOURCE: 50 FR 33255, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 409.1 What is the Bilingual Vocational Materials, Methods, and Techniques Program?

The Bilingual Vocational Materials, Methods, and Techniques Program provides financial assistance for the development of instructional and curriculum materials, methods, or techniques for bilingual vocational training for individuals with limited English proficiency.

(Authority: Sec. 441(c)(1); 20 U.S.C. 2441(c)(1))

§ 409.2 Who is eligible to apply for assistance under this program?

(a) The following are eligible to apply for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Educational institutions.

(3) Nonprofit organizations.

(b) The following are eligible for contracts under this program:

(1) Private for-profit organizations.

(2) Individuals.

(Authority: Sec. 441(c)(1); 20 U.S.C. 2441(c)(1))

§ 409.3 What regulations apply to this program?

The following regulations apply to the Bilingual Vocational Materials, Methods, and Techniques Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Authority: Sec. 441(c); 20 U.S.C. 2441(c))

§ 409.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: Sec. 441(c); 20 U.S.C. 2441(c))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 409.10 What types of projects may be funded?

The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(a) Research in bilingual vocational training;

(b) The development of instructional and curriculum materials, methods, or techniques;

(c) Training projects to familiarize State agencies and training institutions with research findings and with successful pilot and demonstration projects in bilingual vocational education and training; and

(d) Experimental, developmental, pilot, and demonstration projects.

(Authority: Sec. 441.(c)(2); 20 U.S.C. 2441(c)(2))

§ 409.11 How does the Secretary establish priorities for this program?

(a) The Secretary may announce, through one or more notices published in the FEDERAL REGISTER, the priorities for this program, if any, from the types of projects described in § 409.10.

(b) The Secretary may establish a separate competition for one or more of the priorities selected. If a separate competition is established for one or more priorities, the Secretary may reserve all applications that relate to those priorities for review as part of the separate competition.

(Authority: Sec. 441(c)(2); 20 U.S.C. 2441(c)(2))

Subpart C—How Does One Apply for a Grant?

§ 409.20 What must an application include?

An application under this part must—

(a) Describe the qualifications of staff responsible for the project; and

(b) Provide that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 441(d)(1), (3); 20 U.S.C. 2441(d)(1), (3))

Subpart D—How Does the Secretary Make a Grant?

§ 409.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 409.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 409.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved 15 points among the criteria in § 409.31.

(Authority: Sec. 441(c), 20 U.S.C. 2441(c))

§ 409.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for the proposed services and activities for individuals with limited English proficiency.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need; and

(ii) Specific information about how the need will be met.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 441(c); 20 U.S.C. 2441(c))

[50 FR 33255, Aug. 16, 1985; 50 FR 38802, Sept. 25, 1985]

PART 410—INDIAN AND HAWAIIAN NATIVES PROGRAM

Subpart A—General

Sec.
410.1 What is the Indian and Hawaiian Natives Program?
410.2 Who is eligible to apply for assistance under this program?
410.3 What regulations apply to this program?
410.4 What definitions apply to this program?

Sec.

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

410.10 What types of projects may be funded?

Subpart C—How Does One Apply for a Grant?

410.20 How are applications submitted?

Subpart D—How Does the Secretary Make a Grant?

410.30 How does the Secretary evaluate an application?
410.31 What selection criteria does the Secretary use?
410.32 What are additional factors for declining an award?
410.33 Is the Secretary's decision not to make an award under the Indian Program subject to a hearing?

AUTHORITY: Sec. 103 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2313, as enacted by Pub. L. 98-524, unless otherwise noted.

SOURCE: 50 FR 33256, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 410.1 What is the Indian and Hawaiian Natives Program?

(a) The Indian and Hawaiian Natives Program provides financial assistance to Indian tribes and to organizations primarily serving and representing Hawaiian natives to plan, conduct, and administer projects, or portions of projects, that are authorized by and consistent with the Carl D. Perkins Vocational Education Act.

(b) The Secretary is also authorized to use remaining funds under this program to enter into an agreement with the Assistant Secretary of the Interior for Indian Affairs for the operation of vocational education programs authorized by the Act in institutions serving Indians eligible to receive educational benefits as Indians from the Bureau of Indian Affairs. The Secretary of the Interior is authorized to receive funds for this purpose.

(Sec. 103(b)(1), (c); 20 U.S.C. 2313(b)(1),(c))

§ 410.2 Who is eligible to apply for assistance under this program?

(a) The following are eligible for grants, contracts, or cooperative agreements under this program:

(1) The tribal organization of any Indian tribe which is eligible to contract with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

(2) Any organization primarily serving and representing Hawaiian natives which is recognized by the Governor of Hawaii.

(b) Grants, contracts, or cooperative agreements under paragraph (a)(1) of this section are subject to—

(1) Section 102 of the Indian Self-Determination and Education Assistance Act; and

(2) The relevant provisions of sections 4, 5, and 6 of the Act of April 16, 1934.

(Authority: Sec. 103(b)(1),(c); 20 U.S.C. 2313(b)(1),(c); 25 U.S.C. 450f, 455–457)

§ 410.3 What regulations apply to this program?

The following regulations apply to the Indian and Hawaiian Natives Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Authority: Sec. 103; 20 U.S.C. 2313)

§ 410.4 What definitions apply to this program?

The following definitions apply to the Indian and Hawaiian Natives Program:

(a) The definitions in 34 CFR 400.4.

(b) The following additional definitions:

Act of April 16, 1934 means the Act entitled "An Act authorizing the Secretary of the Interior to arrange with States or territories for the education, medical attention, relief of distress, and social welfare of Indians and other purposes."

(Authority: Sec. 103(a)(1)(A); 48 Stat. 596; 25 U.S.C. 452–457)

Hawaiian native means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

(Authority: Sec. 103(a)(1)(B); 20 U.S.C. 2313(a)(1)(B))

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(Authority: 25 U.S.C. 450b)

Tribal organization means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by that governing body or which is democratically elected by the adult members of the Indian community to be served by the organization, which includes the maximum participation of Indians in all phases of its activities.

(Authority: 25 U.S.C. 450b)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 410.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer projects or portions of projects which are authorized by and consistent with the Carl D. Perkins Vocational Education Act.

(b) Projects for Indians funded under this program are in addition to other programs, services, and activities made available to eligible Indians under other provisions of the Act.

(Authority: Sec. 103(b)(1), (b)(3), (c); 20 U.S.C. 2313(b)(1), (b)(3), (c))

Subpart C—How Does One Apply for a Grant?

§ 410.20 How are applications submitted?

An application from a tribal organization must be submitted to the Secretary by the Indian tribe. An application for a project to serve more than one Indian tribe must be approved by each tribe to be served.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 103; 20 U.S.C. 2313, 25 U.S.C. 450b)

Subpart D—How Does the Secretary Make a Grant?

§ 410.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 410.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 410.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved 15 points among the criteria in § 410.31.

(Authority: Sec. 103; 20 U.S.C. 2313)

§ 410.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the proposed project.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need for the proposed activity;

(ii) Information which shows how the need will be met; and

(iii) Ongoing and planned activities in the community which pertain to the need, where appropriate.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (c)(2)(i) and (ii) of this section will commit to the project.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are apppropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (10 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) The private sector involvement in the planning of the project; and

(ii) private sector involvement in the operation of the project.

(h) *Employment Opportunities.* (10 points)

(1) The Secretary looks for information and documentation of the extent to which, upon the completion of their training under this program, more than 65 percent of the trainees will be employed in jobs (including military specialties) related to their training, or will be pursuing additional training related to their training under this program.

(2) For Indian tribes only, the Secretary looks for information which shows that this employment is related to the tribal economic development plan.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 103; 20 U.S.C. 2313)

§ 410.32 What are additional factors for declining an award?

The Secretary may use any of the following additional factors in making a decision whether to award a grant or cooperative agreement to an applicant:

(a) The project duplicates an effort already being made.

(b) Funding the project would create an inequitable distribution among Indian tribes or among organizations serving or representing Native Hawaiians.

(c) The applicant has not performed satisfactorily under a previous Department of Education award.

(Authority: Sec. 103; 20 U.S.C. 2313)

§ 410.33 Is the Secretary's decision not to make an award under the Indian Program subject to a hearing?

After receiving notice that the Secretary will not award a grant or cooperative agreement to an eligible applicant under § 410.2(a)(1), the Indian tribal organization has 30 calendar days to request, in writing, a hearing to review the Secretary's decision.

(Authority: Sec. 103; 20 U.S.C. 2313, 25 U.S.C. 450f)

PART 411—DEMONSTRATION CENTERS FOR THE RETRAINING OF DISLOCATED WORKERS

Subpart A—General

Sec.
411.1 What is the Demonstration Centers for the Retraining of Dislocated Workers Program?
411.2 Who is eligible to apply for assistance under this program?
411.3 What regulations apply to this program?
411.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

411.10 What types of projects may be funded?

Sec.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

411.30 How does the Secretary evaluate an application?
411.31 What selection criteria does the Secretary use?
411.32 How does the Secretary select an application for funding?

Authority: Sec. 415 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2415, as enacted by Pub. L. 98-524, unless otherwise noted.

Source: 50 FR 33258, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 411.1 What is the Demonstration Centers for the Retraining of Dislocated Workers Program?

(a) The Demonstration Centers for Retraining Dislocated Workers Program provides financial assistance to establish one or more demonstration centers.

(b) These centers retrain dislocated workers in order to demonstrate the application of general theories of vocational education to the specific problems of retraining displaced workers.

(Authority: Sec. 415; 20 U.S.C. 2415)

§ 411.2 Who is eligible to apply for assistance under this program?

Any public or private agency, institution, or organization is eligible to apply for a grant, contract, or cooperative agreement under this program.

(Authority: Sec. 415; 20 U.S.C. 2415)

§ 411.3 What regulations apply to this program?

The following regulations apply to the Demonstration Centers for the Retraining of Dislocated Workers Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Authority: Sec. 415; 20 U.S.C. 2415)

§ 411.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: Sec. 415; 20 U.S.C. 2415)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

411.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements to establish one or more demonstration centers for the purposes described in § 411.1.

(b) Each demonstration center assisted under this program may—

(1) Provide retraining programs and counseling services;

(2) Seek additional resources;

(3) Disseminate information;

(4) Coordinate its activities with various other entities providing related services and activities; and

(5) Assist in the establishment of additional centers.

(Authority: Sec. 415; 20 U.S.C. 2415; House Report No. 98-1129, 98th Cong., 2d Sess. p. 87 (1984))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 411.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 411.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 411.31.

(c) Subject to paragraph (d) of this section the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the Federal Register, the Secretary may assign the reserved 15 points among the criteria in § 411.31.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 415; 20 U.S.C. 2415)

§ 411.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the proposed demonstration center.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need for the proposed demonstration center, including evidence of a high concentration of dislocated workers in the area to be served;

(ii) How the need will be met; and

(iii) Ongoing and planned activities in the community pertaining to the proposed demonstration center, where appropriate.

(b) *Plan of operation.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of training.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the training to be provided.

(2) The Secretary looks for information that shows that—

(i) The training is appropriate for the trainees in light of the labor market; and

(ii) Trainees will receive appropriate counseling.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(h) *Private sector involvement.* (5 points)

(1) The secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) The private sector involvement in the planning of the project; and

(ii) The private sector involvement in the operation of the project.

(i) *Employment opportunities.* (5 points)

The Secretary looks for information on and documentation of the extent to which trainees will be employed in jobs related to their training upon completion of their training.

(j) *Dissemination.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient plan for disseminating information about the project, including the results of the project and any specialized materials developed by the project.

(2) The Secretary looks for information that shows—

(i) The design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques developed by the project; and

(v) Provisions for publicizing the findings of the project at the local, State, or national level.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 415; 20 U.S.C. 2415)

[50 FR 33258, Aug. 16, 1985; 50 FR 38802, Sept. 25, 1985]

§ 411.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in §411.31, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: Sec. 415; 20 U.S.C. 2415)

PART 412—COOPERATIVE DEMONSTRATION PROGRAM

Subpart A—General

Sec.
412.1 What is the Cooperative Demonstration Program?
412.2 Who is eligible to apply for an award under this program?
412.3 What regulations apply to this program?
412.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

412.10 What types of projects may be funded?

Sec.
412.11 How does the Secretary establish priorities for this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

412.30 How does the Secretary evaluate an application?
412.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Recipient?

412.40 What cost sharing requirement is imposed under this program?

AUTHORITY: Sec. 411 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2411, as enacted by Pub. L. 98-524, unless otherwise noted.

SOURCE: 50 FR 33260, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 412.1 What is the Cooperative Demonstration Program?

(a) The Cooperative Demonstration Program provides financial assistance for—

(1) Model projects providing improved access to quality vocational education programs for certain individuals;

(2) Projects that are examples of successful cooperation between the private sector and public agencies in vocational education;

(3) Projects to overcome national skill shortages; and

(4) Other activities which the Secretary may designate that are related to the purpose of the Act.

(b) Projects eligible for assistance are described in § 412.10

(Authority: Sec. 411(a); 20 U.S.C. 2411(a))

§ 412.2 Who is eligible to apply for an award under this program?

The following are eligible to apply for an award under this program:

(a) State educational agencies (SEAs).

(b) Local educational agencies (LEAs).

(c) Postsecondary educational institutions.

(d) Institutions of higher education.

(e) Other public and private agencies, organizations, and institutions.

(Authority: Sec. 411(a); 20 U.S.C. 2411(a))

§ 412.3 What regulations apply to this program?

The following regulations apply to the Cooperative Demonstration Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Authority: Sec. 411; 20 U.S.C. 2411)

§ 412.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to the Cooperative Demonstration Program.

(Authority: Sec. 411; 20 U.S.C. 2411)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 412.10 What types of projects may be funded?

(a) The Secretary may support directly or through grants, cooperative agreements, or contracts the following types of projects:

(1) Model projects providing improved access to quality vocational education programs for—

(i) Handicapped individuals;

(ii) Disadvantaged individuals;

(iii) Adults who are in need of training and retraining;

(iv) Individuals who are single parents or homemakers;

(v) Individuals who participate in programs designed to eliminate sex bias and stereotyping in vocational education;

(vi) Criminal offenders who are serving in a correctional institution; and

(vii) Men and women seeking nontraditional occupations.

(2)(i) Projects that are examples of successful cooperation between the private sector (including employers, consortia of employers, labor organizations, and building trade councils) and public agencies in vocational education, including State boards and eligible recipients.

(ii) The projects described in paragraph (a)(2)(i) of this section must be designed to demonstrate ways in which vocational education and the private sector of the economy can work together effectively to assist vocational education students to attain the advanced level of skills needed to make the transition from school to productive employment, including—

(A) Work experience and apprenticeship projects;

(B) Transitional worksite job training for vocational education students which is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient;

(C) Placement services in occupations which the students are preparing to enter; and

(D) Where practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas.

(iii) The projects described in paragraphs (a)(2) (i) and (ii) of this section may include institutional and on-the-job training, support services authorized by the Act, and such other necessary assistance as the Secretary determines to be necessary for the successful completion of the project.

(3) Projects to overcome national skill shortages, as designated by the Secretary in cooperation with the Secretary of Labor, Secretary of Defense, and Secretary of Commerce.

(4) Such other activities which the Secretary may designate which are related to the purposes of the Act.

(b) All projects assisted under the Cooperative Demonstration Program must be—

(1) Of direct service to the individuals enrolled; and

(2) Capable of wide replication by service providers.

(Authority: Sec. 411 (a), (b), (c); 20 U.S.C. 2411 (a), (b), (c))

§ 412.11 How does the Secretary establish priorities for this program?

(a) The Secretary may announce through one or more notices published in the FEDERAL REGISTER the priorities for this program (including any national skill shortages to be addressed) if any, from the types of projects described in § 412.10.

(b) The Secretary may establish a separate competition for one or more of the priorities selected. If a separate competition is established for one or more priorities, the Secretary may reserve all applications that relate to those priorities for review as part of the separate competition.

(Authority: Sec. 411; 20 U.S.C. 2411)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 412.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 412.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 412.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved 15 points among the criteria in § 412.31.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 411; 20 U.S.C. 2411)

§ 412.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for and the soundness of the rationale for the project.

(2) The Secretary looks for information that shows—

(i) A clear description of the need for the proposed project;

(ii) Specific evidence of the need for the project;

(iii) A description of any ongoing and planned activities in the community relative to the need, including, if appropriate, the relationship of any local, regional or State economic development plan;

(iv) Evidence that demonstrates the vocational training to be provided is designed to meet current and projected occupational needs;

(v) A clear statement of what the project seeks to demonstrate; and

(vi) Evidence that the project is likely to serve as a model in the future.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (5 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) Private sector involvement in the planning of the project; and

(ii) Private sector involvement in the operation of the project.

(h) *Employment opportunities.* (5 points)

The Secretary looks for information and documentation of the extent to which trainees will be employed in jobs related to their training upon completion of their training.

(i) *Dissemination.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient plan for disseminating information about the demonstration project, including the results of the project and any specialized materials developed by the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project; and

(v) Provisions for publicizing the findings of the project at the local, State, or national level.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 411; 20 U.S.C. 2411)

Subpart E—What Conditions Must Be Met by a Recipient?

§ 412.40 What cost sharing requirement is imposed under this program?

(a) A recipient shall provide not less than 25 percent of the cost of the demonstration project it conducts under this program.

(b) In accordance with Subpart G of 34 CFR Part 74, the non-Federal share may be in the form of cash or in-kind contributions, including the fair market value of facilities, overhead, personnel, and equipment.

(Authority: Sec. 411(b)(2); 20 U.S.C. 2411(b)(2))

PART 414—STATE EQUIPMENT POOLS

Subpart A—General

Sec.
414.1 What is the State Equipment Pools Program?
414.2 Who is eligible to apply for assistance under this program?
414.3 What regulations apply to this program?
414.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program.

414.10 What types of projects may be funded?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

414.30 How does the Secretary evaluate an application?
414.31 What selection criteria does the Secretary use?

AUTHORITY: Sec. 413 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2413, as enacted by Pub. L. 98-524, unless otherwise noted.

SOURCE: 50 FR 33262, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 414.1 What is the State Equipment Pools Program?

The State Equipment Pools Program provides financial assistance for the operation of State programs involving the loan of high-technology, state-of-the-art equipment for use in local vocational education programs.

(Authority: Sec. 413; 20 U.S.C. 2413)

§ 414.2 Who is eligible to apply for assistance under this program?

State boards are eligible to apply for grants or cooperative agreements under this program.

(Authority: Sec. 413; 20 U.S.C. 2413)

§ 414.3 What regulations apply to this program?

The following regulations apply to the State Equipment Pools Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Authority: Sec. 413; 20 U.S.C. 2413)

§ 414.4 What definitions apply to this program?

The following definitions apply to the State Equipment Pools Program:

(a) The definitions in 34 CFR 400.4.

(b) For the purposes of this part, "High technology, state-of-the-art equipment" includes, but is not limited to—

(1) Computer-controlled equipment;
(2) Electro-optic equipment;
(3) Electronic testing equipment;
(4) Scientific instrumentation;
(5) Micrographic equipment;
(6) Earth resource equipment;
(7) Telecommunications equipment; and
(8) Computers and peripherals.

(Authority: Sec. 413; 20 U.S.C. 2413)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 414.10 What types of projects may be funded?

(a) The Secretary awards grants or cooperative agreements to State boards for the operation of State programs involving the loan of high technology, state-of-the-art equipment to eligible recipients for use in local vocational education programs.

(b) The State board shall establish its own criteria for evaluating applications by eligible recipients and for the effective use of equipment, including the redistribution of equipment, if necessary.

(c) No State may receive funds for more than two consecutive years under this program.

(Authority: Sec. 413; 20 U.S.C. 2413)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 414.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 414.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 414.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved 15 points among the criteria in § 414.31.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 413; 20 U.S.C. 2413)

[50 FR 33262, Aug. 16, 1985; 50 FR 38802, Sept. 25, 1985]

§ 414.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows

the need for and the soundness of the rationale for the project.

(2) The Secretary looks for information that shows—

(i) A clear description of the need for specific high technology, state-of-the-art equipment in local educational agencies and postsecondary educational institutions; and

(ii) Specific evidence of that need.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for informaton that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applican plans to use are adequate; and

(ii) The equipment and supplies tha the applicant plans to use are adequate.

(g) *Private sector involvement.* (1 points)

The Secretary reviews each application for information that shows the i volvement of the private sector; including—

(1) Involvement in program planning;

(2) Involvement in program evaluation; and

(3) Other forms of support.

(h) *Cooperative relationships.* (5 points)

The Secretary reviews each application for information that shows that in preparing the application, the State board has consulted with local educational agencies and postsecondary educational institutions.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 413; 20 U.S.C. 2413)

PART 415—MODEL CENTERS FOR VOCATIONAL EDUCATION FOR OLDER INDIVIDUALS

Subpart A—General

Sec.

415.1 What is the Model Centers for Vocational Education for Older Individuals Program?
415.2 Who is eligible for an award under this program?
415.3 What regulations apply to this program?
415.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

415.10 What type of projects may be funded?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

415.30 How does the Secretary evaluate an application?
415.31 What selection criteria does the Secretary use?
415.32 How does the Secretary select an application for funding?

AUTHORITY: 20 U.S.C. 2417, unless otherwise noted.

SOURCE: 50 FR 33263, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 415.1 What is the Model Centers for Vocational Education for Older Individuals Program?

The Model Centers for Vocational Education for Older Individuals Program (Model Centers) provides assistance to establish and operate model centers to focus greater attention on the special vocational needs of older individuals, and to promote employment opportunities for older individuals.

(Authority: Sec. 417(a); 20 U.S.C. 2419(a))

§ 415.2 Who is eligible for an award under this program?

Local educational agencies and postsecondary educational institutions are eligible for an award under this program.

(Authority: Sec. 417(b); 20 U.S.C. 2417(b))

§ 415.3 What regulations apply to this program?

The following regulations apply to the Model Centers Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Authority: Sec. 417; 20 U.S.C. 2417)

§ 415.4 What definitions apply to this program?

The following definitions apply to the Model Centers for Vocational Education For Older Individuals Program:

(a) The definitions referred to in 34 CFR 400.4.

(b) The following additional definition:

"Older Individual" means an individual fifty-five years of age or older.

(Authority: Sec. 417(d); 20 U.S.C. 2417(d))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 415.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants or cooperative agreements for projects to establish and operate model centers for vocational education for older individuals.

(b) Each model center assisted by the Secretary must—

(1) Provide training or retraining to update older individuals' skills;

(2) Prepare older individuals for new careers when their skills have been rendered obsolete by technological advances;

(3) Promote employment through training or retraining in areas of job potential in growth industries utilizing new technologies;

(4) Provide assistance for later-life career changes, with special emphasis on the needs of older individuals who are displaced homemakers;

(5) Provide information, counseling, and support services to assist older individuals in obtaining employment;

(6) Encourage providers of vocational education, including community colleges and technical schools, to offer more job training opportunities targeted to or easily accessible to older individuals; and

(7) Promote training of paraprofessionals in gerontology and geriatrics.

(Authority: Sec. 417(b); 20 U.S.C. 2417(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 415.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the criteria in § 415.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 415.31.

(c) Subject to paragraph (d) of this section, the maximum possible points in each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved 15 points among the criteria in § 415.31.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 417; 20 U.S.C. 2417)

§ 415.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the proposed Model Center.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need for the proposed model center;

(ii) Ongoing and planned activities in the community supporting the need for the proposed model center; and

(iii) The relationship of the proposed model center to any local or State economic development plan.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups.

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that show

the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (5 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) The private sector involvement in the planning of the project; and

(ii) The private sector involvement in the operation of the project.

(h) *Employment opportunities.* (5 points)

The Secretary looks for information and documentation of the extent to which trainees will be employed in jobs related to their training upon completion of their training.

(i) *Dissemination.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient plan for disseminating information about the project, including the results of the project and any specialized materials developed by the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques developed by the project; and

(v) Provisions for publicizing the findings of the project at the local, State, or national level.

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(Authority: Sec. 417; 20 U.S.C. 2417)

[50 FR 33263, Aug. 16, 1985, as amended at 51 FR 25494, July 14, 1986]

§ 415.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in § 415.31, the Secretary determines whether the most highly rated applications are broadly and equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: Sec. 417; 20 U.S.C. 2417)

PART 416—NATIONAL VOCATIONAL EDUCATION RESEARCH PROGRAM

Subpart A—General

Sec.
416.1 What are the purposes of the National Vocational Education Research Program?
416.2 Who is eligible for an award under this program?
416.3 What regulations apply to this program?
416.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

416.10 What types of projects does the Secretary fund under this program?
416.11 How does the Secretary establish priorities for this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

416.30 How does the Secretary evaluate an application?
416.31 What selection criteria does the Secretary use?
416.32 How does the Secretary select an unsolicited application for funding?

AUTHORITY: Secs. 401 and 402 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2401 and 2402, as enacted by Pub. L. 98-524, unless otherwise noted.

SOURCE: 50 FR 33265, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 416.1 What are the purposes of the National Vocational Education Research Program?

The purposes of the National Vocational Education Research Program are to—

(a) Improve access to vocational educational programs for handicapped individuals, disadvantaged individuals, men and women who are entering nontraditional occupations, adults who are in need of retraining, single parents or homemakers, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(b) Improve the competitive process by which research projects are awarded;

(c) Encourage the dissemination of findings of research projects assisted under this Act to all States; and

(d) Authorize research activities
which are readily applicable to the vo-
cational education setting and are o
practical application to vocational edu
cation administrators, counselors, in
structors, and others involved in voca
tional education.

(Authority: Sec. 401; 20 U.S.C. 2401)

§ 416.2 Who is eligible for an award unde this program?

(a) Any individual or public or pr
vate agency, organization, or institu
tion may apply for an award under th
program.

(b) Any individual researcher, com
munity college, State advisory counc
or State or local educator may subm
an unsolicited research application.

(Authority: Sec. 402(a), (b)(2); 20 U.S.
2402(a), (b)(2))

§ 416.3 What regulations apply to this p gram?

The following regulations apply
the National Vocational Education R
search Program:

(a) The regulations in 34 CFR P
400.

(b) The regulations in this part.

(Authority: Secs. 401, 402; 20 U.S.C. 2401, 2402)

§ 416.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: Secs. 401, 402; 20 U.S.C. 2401, 2402)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 416.10 What types of projects does the Secretary fund under this program?

The Secretary directly, or through grants, cooperative agreements, or contracts, funds projects of applied research on aspects of vocational education that are specifically related to the Act, including applied research on—

(a) Effective methods for providing quality vocational education to handicapped individuals, disadvantaged individuals, men and women who are entering nontraditional fields, adults who are in need of training and retraining, individuals who are single parents or homemakers, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(b) Strategies for coordinating local, State, and Federal vocational education, employment training, and economic development programs to maximize their effectiveness;

(c) Strategies for improving worker training and retraining;

(d) The constructive involvement of the private sector in public vocational education;

(e) Successful methods of reinforcing and enhancing basic academic skills in vocational settings;

(f) The development of curriculum materials and instructional methods relating to new and emerging technologies, and assessments of the nature of change in the workplace and its effect on individual jobs;

(g) The identification of institutional characteristics which improve the preparation of youth and adults for employment;

(h) The development of effective methods for providing quality vocational education to individuals with limited English proficiency, including research related to bilingual vocational training; and

(i) Any other aspect of vocational education that is specifically related to the Act.

(Authority: Sec. 402(a); 20 U.S.C. 2402(a))

[50 FR 33265, Aug. 16, 1985; 50 FR 38802, Sept. 25, 1985]

§ 416.11 How does the Secretary establish priorities for this program?

(a) The Secretary may announce, through one or more notices published in the FEDERAL REGISTER, the priorities for this program, from the topics described in § 416.10.

(b) The Secretary may establish a separate competition for one or more of the priorities selected. If a separate competition is established for one or more priorities, the Secretary may reserve all applications that relate to those priorities for review as part of the separate competition.

(c) The Secretary may announce in the FEDERAL REGISTER the amount of funds reserved for unsolicited research applications under this program.

(Authority: Sec. 402; 20 U.S.C. 2402)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 416.30 How does the Secretary evaluate an application?

(a) (1) The Secretary evaluates an application for a grant or cooperative agreement submitted in response to an application notice in the FEDERAL REGISTER on the basis of the criteria in § 416.31.

(2) The Secretary may award up to 100 points including a reserved 15 points to be distributed in accordance with paragraph (a)(4) of this section, based on criteria in § 416.31 of this part.

(3) Subject to paragraph (a)(4) of this section, the maximum possible points for each criterion is indicated in parentheses after its heading.

(4) For each competition, as announced through an application notice

published in the FEDERAL REGISTER, the Secretary may assign the reserved 15 points among the criteria in § 416.31 of this part.

(b) (1) The Secretary evaluates an unsolicited research application for a grant or cooperative agreement on the basis of the following criteria:

(i) The extent to which the aspect of applied research proposed is specifically related to the purposes of the Act.

(ii) The extent to which the project addresses an important national need.

(iii) The overall quality of the project, including, as appropriate, the quality of its design and management plan, the quality of key personnel, the adequacy of the applicant's resources, and the cost-effectiveness of the project.

(iv) The likelihood that the project will make an important contribution to vocational education.

(2) The criteria in paragraph (b)(1) of this section are not subject to 34 CFR 75.201(a).

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 402; 20 U.S.C. 2402)

§ 416.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate each application submitted in response to an application notice:

(a) *National need.* (20 Points)

(1) The Secretary reviews each application to what extent it addresses a national need in vocational education.

(2) The Secretary looks for information that shows the extent to which the project would make a contribution of national significance, as measured by factors such as—

(i) The need for the project in relation to any program priority announced in the FEDERAL REGISTER; and

(ii) The likelihood that the project will make an important contribution to vocational education.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of Key personnel.* (15 Points)

(1) The Secretary reviews each application for information that shows the qualification of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 Points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget fr the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Dissemination plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the dissemination plan for the project.

(2) The Secretary looks for information that shows—

(i) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(ii) A clear description of the project outcomes; and

(iii) A detailed description of how information and materials will be disseminated.

(h) *Postsecondary institutions.* (5 Points).

The Secretary gives preference to applications submitted by public and private postsecondary institutions.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 402; 20 U.S.C. 2402)

§ 416.32 How does the Secretary select an unsolicited application for funding?

(a) After evaluating an unsolicited research application on the basis of the criteria in § 416.30(b), the Secretary compares that application to any other unsolicited application the Secretary has received. If unsolicited applications are determined to be of equal quality, the Secretary gives a preference to one submitted by a public or private postsecondary institution.

(b) The Secretary may fund an unsolicited research application at any time during the fiscal year.

(Authority: Sec. 402; 20 U.S.C. 2402)

PART 417—NATIONAL CENTER FOR RESEARCH IN VOCATIONAL EDUCATION

Subpart A—General

Sec.
417.1 What is the National Center for Research in Vocational Education?
417.2 Who is eligible to apply to be the National Center?
417.3 What regulations apply to the National Center?
417.4 What definitions apply to the National Center?

Subpart B—What Kinds of Activities Does the Secretary Support at the National Center?

417.10 What kinds of activities does the National Center carry out?

Subpart C—How Does One Apply to be the National Center?

417.20 What must an application include?

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417.30 How does the Secretary evaluate an application?
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Subpart E—What Conditions Must Be Met by the National Center?

417.40 Must the National Center have a Director?
417.41 What reports must the National Center submit to the Secretary?
417.42 What activities must be performed during the fifth year of funding?

AUTHORITY: Sec. 404 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2404, as enacted by Pub. L. 98-524, unless otherwise noted.

SOURCE: 50 FR 33267, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 417.1 What is the National Center for Research in Vocational Education?

(a) The Secretary supports the operations of the National Center for Research in Vocational Education ("National Center") established by section 404 of the Act and designated by the Secretary once every five years.

(b) In designating the National Center, the Secretary acts with the advice of a panel composed of individuals appointed by the Secretary who are not Federal employees and who are recognized nationally as experts in vocational education administration and research.

(Authority: Sec. 404; 20 U.S.C. 2404)

§ 417.2 Who is eligible to apply to be the National Center?

A nonprofit entity associated with a public or private nonprofit university which is prepared to make a substantial financial contribution towards the establishment of the National Center is eligible to be designated as the National Center.

(Authority: Sec. 404; 20 U.S.C. 2404)

§ 417.3 What regulations apply to the National Center?

The following regulations apply to the National Center:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Authority: Sec. 404; 20 U.S.C. 2404)

§ 417.4 What definitions apply to the National Center?

The definitions in 34 CFR 400.4 apply to the National Center.

(Authority: Sec. 404; 20 U.S.C. 2404)

Subpart B—What Kinds of Activities Does the Secretary Support at the National Center?

§ 417.10 What kinds of activities does the National Center carry out?

(a) (1) The primary purpose of the National Center are to design and conduct research and development projects that are consistent with the purposes of the Act, including—

(i) Longitudinal studies which extend over a period of years; and

(ii) Supplementary and short term activities.

(2) The National Center may conduct its research and development projects and activities directly, or through contracts with other public agencies and public or private institutions of higher education.

(b) The National Center shall—

(1) Conduct applied research and development on—

(i) Effective methods for providing quality vocational education to handicapped individuals, disadvantaged individuals, men and women in nontraditional fields, adults, individuals who are single parents or homemakers, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(ii) The constructive involvement of the private sector in public vocational education;

(iii) Successful methods of reinforcing and enhancing basic academic skills in vocational settings;

(iv) The development of curriculum materials and instructional methods relating to new and emerging technologies;

(v) Assessments of the nature of change in the workplace and its effect on individual jobs; and

(vi) The identification of institutional characteristics which improve the preparation of youth and adults for employment;

(2) Provide leadership development through an advanced study center;

(3) Provide in-service education activities for State and local leaders in vocational education;

(4) Disseminate the results of the research and development projects funded by the Center;

(5) Develop and provide information to facilitate national planning and policy development in vocational education;

(6) Provide technical assistance to programs serving special populations, including handicapped individuals and individuals with limited English proficiency;

(7) Act as a clearinghouse for information on contracts or grants made by the States to carry out research, curriculum, and personnel development activities and on contracts or grants made by the Secretary under Title IV of the Act. The National Center shall make available to the States, in a reasonable manner, abstracts on research, curriculum development, and personnel development projects;

(8) Work with States, local educational agencies, and other public agencies in developing methods of planning and evaluating programs, including follow-up studies of program completers, so that public agencies can offer vocational education programs which are more closely related to the types of jobs available in their communities, States, and regions; and

(9) After consultation with the National Commission for Employment Policy, report annually to the Congress, the Secretary, and the Secretary of Labor on the extent, efficiency, and effectiveness of joint planning and coordination under the Act and the Job Training Partnership Act.

(c) The Secretary awards a grant annually for the operation of the National Center.

(Authority: Sec. 404; 20 U.S.C. 2404)

Subpart C—How Does One Apply to be the National Center?

§ 417.20 What must an application include?

An application must describe the financial contribution the public or private nonprofit university will make towards the establishment of the National Center.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 404; 20 U.S.C. 2404)

Subpart D—How Does the Secretary Designate the National Center?

§ 417.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 417.31.

(b) The Secretary may award up to 100 points based on the criteria in § 417.31.

(c) The maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(Authority: Sec. 404; 20 U.S.C. 2404)

§ 417.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Required functions.* (40 points)

The Secretary reviews each application for information that shows that each of the required services and activities the applicant will conduct under § 417.10(b) will be of high quality and effective.

(b) *Management.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the management plan.

(2) The Secretary looks for information that shows—

(i) The applicant's philosophy of management for the National Center;

(ii) How the applicant will implement that philosophy of management in organizing the National Center, particularly with regard to the public or private nonprofit university with which it is associated;

(iii) The applicant's plan for managing the National Center's activities and personnel, including quality control procedures for its activities and products and procedures for monitoring compliance with timeliness; and

(iv) Adequate budgeting, accounting, and recordkeeping procedures.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use for the National Center.

(2) The Secretary looks for information that shows—

(i) The qualifications of the Director;

(ii) The qualifications of each of the other key personnel to be used for the National Center;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the National Center, as well as other information that the applicant provides.

(d) *Vocational education experience.* (10 points)

(1) The Secretary reviews each application for information that shows the institutional experience of the applicant.

(2) The Secretary looks for information that shows—

(i) The applicant's experience in conducting applied research and development activities in the field of vocational education of the type described in the Act; and

(ii) The applicant's capacity for conducting applied research and development activities in the field of vocational education of the type described in the Act.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the National Center will have an adequate budget and will be cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the National Center is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(g) *External relations.* (5 points)

(1) The Secretary reviews each application for information that shows that the National Center will have cooperative productive relationships with interested and affected entities.

(2) The Secretary looks for information that explains the National Center's future relationship to—

(i) The National Commission for Employment Policy;

(ii) The advisory committee established under section 404(c) of the Act; and

(iii) Personnel at the State and local level who are working to improve vocational education programs, materials and curricula.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 404; 20 U.S.C. 2404)

Subpart E—What Conditions Must be Met by the National Center?

§ 417.40 Must the National Center have a Director?

The National Center shall have a Director who is appointed by the university associated with the National Center and is assisted by the advisory committee established under section 404(c) of the Act.

(Authority: Sec. 404(a)(3); 20 U.S.C. 2404(a)(3))

§ 417.41 What reports must the National Center submit to the Secretary?

(a) The National Center shall submit the following to the Secretary:

(1) Minutes of each meeting of the advisory committee established under section 404(c) of the Act, within 30 days after each meeting.

(2) Quarterly performance reports which described the progress, problems, and future plans for each significant activity of the National Center, within 30 days of the end of each quarter.

(3) Quarterly financial status reports (Standard Form 269), within 30 days of the end of each quarter.

(4) Monthly exception reports which describe—

(i) Any problems, delays, or adverse conditions which materially impair the ability of the National Center to accomplish its purposes, along with an explanation of any action taken or contemplated to resolve the difficulties; and

(ii) Any favorable developments which will permit the National Center to accomplish its purposes sooner, at less cost, or more effectively than projected.

(5) Ten copies of all substantive reports and products produced under the grant.

(6) An annual performance report which summarizes the accomplishments of each significant activity of the National Center during that grant year, within 90 days of the end of the grant year. (The annual performance report may be submitted in place of the quarterly financial status reports under paragraph (a)(3) of this section for the fourth quarter of each year.)

(7) A final performance report which summarizes the accomplishments of each significant activity of the National Center during the five year award cycle, within 90 days of the end of that cycle.

(b) The annual reporting requirement in 34 CFR 75.720(b) does not apply to this part.

(Authority: Sec. 404; 20 U.S.C. 2404)

§ 417.42 What activities must be performed during the fifth year of funding?

During the fifth year of the award cycle, the National Center shall develop and remain prepared to implement a contingency plan for completing all substantive work by the end of the eleventh month of that year and transferring all projects, services, and activities to a successor during the twelfth month of that year.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: Sec. 404; 20 U.S.C. 2404)

PART 425—ADULT EDUCATION—GENERAL PROVISIONS

Sec.

425.1 What is the purpose of the Adult Education Act?
425.2 What programs are authorized by the Adult Education Act?
425.3 What regulations apply to the adult education programs?
425.4 What definitions apply to the adult education programs?

AUTHORITY: 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

SOURCE: 54 FR 34409, Aug. 18, 1989, unless otherwise noted.

§ 425.1 What is the purpose of the Adult Education Act?

The purpose of the Adult Education Act (the Act) is to assist the States to—

(a) Improve educational opportunities for adults who lack the level of literacy skills requisite to effective citizenship and productive employment;

(b) Expand and improve the current system for delivering adult education services, including delivery of these services to educationally disadvantaged adults; and

(c) Encourage the establishment of adult education programs that will—

(1) Enable adults to acquire the basic educational skills necessary for literate functioning;

(2) Provide adults with sufficient basic education to enable them to benefit from job training and retraining programs and obtain and retain pro-

ductive employment so that they might more fully enjoy the benefits and responsibilities of citizenship; and

(3) Enable adults who so desire to continue their education to at least the level of completion of secondary school.

(Authority: 20 U.S.C. 1201)

§ 425.2 What programs are authorized by the Adult Education Act?

The following programs are authorized by the Act:

(a) Adult Education State-administered Basic Grant Program (34 CFR part 426).

(b) National Workplace Literacy Program (34 CFR part 432).

(c) State-administered Workplace Literacy Program (34 CFR part 433).

(d) State-administered English Literacy Program (34 CFR part 434).

(e) National English Literacy Demonstration Program for Individuals of Limited English Proficiency (34 CFR part 435).

(f) Adult Migrant Farmworker and Immigrant Education Program (34 CFR part 436).

(g) National Adult Literacy Volunteer Training Program (34 CFR part 437).

(h) State Program Analysis Assistance and Policy Studies Program (34 CFR part 438).

(Authority: 20 U.S.C. 1201 *et seq.*)

§ 425.3 What regulations apply to the adult education programs?

The following regulations apply to the adult education programs:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations) for grants, including cooperative agreements, to institutions of higher education, hospitals, and nonprofit organizations.

(2) 34 CFR part 75 (Direct Grant Programs) (applicable to parts 432, 435, 436, 437, and 438).

(3) 34 CFR part 76 (State-administered Programs) (applicable to parts 426, 433, and 434), except that 34 CFR 76.101 (The general State application) does not apply.

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for grants, including cooperative agreements, to State and local governments, including Indian tribal organizations.

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this part 425.

(c) The regulations in 34 CFR parts 426, 432, 433, 434, 435, 436, 437, and 438.

(Authority: 20 U.S.C. 1201 *et seq.*)

§ 425.4 What definitions apply to the adult education programs?

(a) *Definitions in the Act.* The following terms used in regulations for adult education programs are defined in sections 312 and 326(b) of the Act:

Academic education
Adult
Adult education
Community-based organization
Community school program
Correctional institution
Criminal offender
Educationally disadvantaged adult
English literacy program
Institution of higher education
Local educational agency
Out-of-school youth
Private industry council
State educational agency

(b) *Definitions in EDGAR.* The following terms used in regulations for adult education programs are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget period
Contract

ED
EDGAR
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
Subgrant
Subgrantee

(c) *Other definitions.* The following definitions also apply to regulations for adult education programs:

Act means the Adult Education Act (20 U.S.C. 1201 *et seq.*).

Adult basic education means instruction designed for an adult who—

(1) Has minimal competence in reading, writing, and computation;

(2) Is not sufficiently competent to meet the educational requirements of adult life in the United States; or

(3) Is not sufficiently competent to speak, read, or write the English language to allow employment commensurate with the adult's real ability.

If grade level measures are used, adult basic education includes grades 0 through 8.9.

Adult secondary education means instruction designed for an adult who—

(1) Is literate and can function in everyday life, but is not proficient; or

(2) Does not have a certificate of graduation (or its equivalent) from a school providing secondary education.

If using grade level measures, adult secondary education includes grades 9 through 12.9.

Adults with Limited English proficiency, persons with limited English proficiency, individuals of limited English proficiency, and *limited English proficient adults* mean individuals who—

(1) Were not born in the United States or whose native language is a language other than English;

(2) Come from environments where a language other than English is dominant; or

(3) Are American Indian or Alaska Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(4) Who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny these individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(Authority: 20 U.S.C. 3283(a)(1))

Expansion means that the State educational agency (SEA) has increased during the period covered by the State's four-year plan the number of agencies, institutions, and organizations—other than local educational agencies—used to provide adult education and support services in order to increase the number of adults served, particularly the number of typically underserved adults participating in the adult education program, such as educationally disadvantaged adults, individuals of limited English proficiency, and adults with handicaps.

Homeless or *homeless adult:*

(1) The terms mean an adult lacking a fixed, regular, and adequate nighttime residence as well as an individual having a primary nighttime residence that is—

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) The terms do not include any adult imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(Authority: 42 U.S.C. 11301)

Immigrant means any refugee admitted or paroled into this country or any alien except one who is exempt under the provisions of the Immigration and Nationality Act, as amended.

(Authority: 8 U.S.C. 1101(a)(15))

Institutionalized individual means an adult, as defined in the Act, who is an inmate, patient, or resident of a correctional, medical, or special institution.

Migrant farmworker means a person who has moved within the past 12 months from one school district to another—or, in a State that is comprised of a single school district, has moved from one school administrative area to another— to enable him or her to obtain temporary or seasonal employment in any activity directly related to—

(1) The production or processing of crops, dairy products, poultry, or livestock for initial commercial sale or as a principal means of personal subsistence;

(2) The cultivation or harvesting of trees; or

(3) Fish farms.

Outreach means activities designed to—

(1) Inform educationally disadvantaged adult populations of the availability and benefits of the adult education program;

(2) Actively recruit these adults to participate in the adult education program; and

(3) Assist these adults to participate in the adult education program by providing reasonable and convenient access and support services to remove barriers to their participation in the program.

Program year means the twelve-month period during which a State operates its adult education program.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, and the Virgin Islands.

(Authority: 20 U.S.C. 1201a(7) and 48 U.S.C. 1681)

State administrative costs means costs for those management and supervisory activities necessary for direction and control by the State educational agency responsible for developing the State plan and overseeing the implementation of the adult education program under the Act. The term includes those costs incurred for State advisory councils under section 332 of the Act, but does not include costs incurred for such additional activities as evaluation, teacher training, dissemination, technical assistance, and curriculum development.

(Authority: 20 U.S.C. 1201 *et seq.*)

PART 426—ADULT EDUCATION STATE-ADMINISTERED BASIC GRANT PROGRAM

Subpart A—General

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426.3 What are the general responsibilities of the State educational agency?
426.4 What regulations apply to the program?
426.5 What definitions apply to the program?

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426.10 What documents must a State submit to receive a grant?
426.11 How is the State plan developed?
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426.33 What are special experimental demonstration projects and teacher training projects?

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426.40 What are the State and local administrative costs requirements?
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426.44 How does a State request a waiver of the maintenance of effort requirement?
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426.50 What are a State's responsibilities regarding a State advisory council on adult education?
426.51 What are the membership requirements of a State advisory council on adult education?
426.52 What are the responsibilities of a State advisory council on adult education?
426.53 May a State establish an advisory body other than a State advisory council?

AUTHORITY: 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

SOURCE: 54 FR 34411, Aug. 18, 1989, unless otherwise noted.

Subpart A—General

§ 426.1 What is the Adult Education State-administered Basic Grant Program?

The Adult Education State-administered Basic Grant Program (the program) is a cooperative effort between the Federal Government and the States to provide adult education. Federal funds are granted to the States on a formula basis. The States fund local programs of adult basic and secondary education based on need and resources available.

(Authority: 20 U.S.C. 1203)

§ 426.2 Who is eligible for an award?

State Educational Agencies (SEAs) are eligible for awards under this part.

(Authority: 20 U.S.C. 1203)

§ 426.3 What are the general responsibilities of the State educational agency?

(a) A State that desires to participate in the program shall designate the SEA as the sole State agency responsible for the administration and supervision of the program under this part.

(b) The SEA has the following general responsibilities:

(1) Development, submission, and implementation of the State application and plan, and any amendments to these documents.

(2) Evaluation of activities, as described in section 352 of the Act and § 426.46.

(3) Consultation with the State advisory council, if a State advisory council has been established under section 332 of the Act and § 426.50.

(4) Consultation with other appropriate agencies, groups, and individuals involved in the planning, administration, evaluation, and coordination of programs funded under the Act.

(5)(i) Assignment of personnel as may be necessary for State administration of programs under the Act.

(ii) The SEA must ensure that—

(A) These personnel are sufficiently qualified by education and experience; and

(B) There is a sufficient number of these personnel to carry out the responsibilities of the State.

(6) If the State imposes any rule or policy relating to the administration and operation of programs under the Act (including any rule or policy based on State interpretation of any Federal law, regulation, or guidance), the SEA shall identify the rule or policy as a State-imposed requirement.

(Authority: 20 U.S.C. 1205 (a) and (b))

§ 426.4 What regulations apply to the program?

The following regulations apply to the program:

(a) The regulations in this part 426.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1201 *et seq.*)

§ 426.5 What definitions apply to the program?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1201 *et seq.*)

Subpart B—How Does a State Apply for a Grant?

§ 426.10 What documents must a State submit to receive a grant?

An SEA shall submit the following to the Secretary as one document:

(a) A State plan, developed once every four years, that meets the requirements of the Act and the regulations in this part.

(b) A State application consisting of program assurances, signed by an authorized official of the SEA, to provide that—

(1) The SEA will provide such methods of administration as are necessary for the proper and efficient administration of the Act;

(2) Federal funds granted to the State under the Act will be used to supplement, and not supplant, the amount of State and local funds available for uses specified in the Act;

(3) Programs, services, and activities funded in accordance with the uses specified in section 322 of the Act are designed to expand or improve the quality of adult education programs, including programs for educationally disadvantaged adults, to initiate new programs of high quality, or, where necessary, to maintain programs;

(4) The SEA will provide such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid to the State (including such funds paid by the State to eligible recipients under the Act);

(5) The SEA has instituted policies and procedures to ensure that copies of the State plan and all statements of general policy, rules, regulations, and procedures will be made available to the public;

(6) The SEA will comply with the maintenance of effort requirements in section 361(b) of the Act;

CROSS-REFERENCE: See § 426.42, What is the maintenance of effort requirement?

(7) Adults enrolled in adult basic education programs will not be charged tuition, fees, or any other charges, or be required to purchase any books or any other materials that are needed for participation in the program;

(8) The SEA may use not more than 20 percent of the funds granted to the State under the Act for programs of equivalency for a certificate of graduation from secondary school;

(9) As may be required by the Secretary, the SEA will report information concerning special experimental demonstration projects and teacher training projects supported under section 353 of the Act; and

(10) The SEA annually will report information about the State's adult education students, programs, expenditures, and goals, as may be required by the Secretary.

(Approved under OMB Control Nos. 1830-0026 and 1830-0027)

(Authority: 20 U.S.C. 1203a(b)(2), 1206a(c)(3) and (5), 1206b, 1207a, 1208, and 1209(b))

§ 426.11 How is the State plan developed?

In formulating the State plan, the SEA shall—

(a) Meet with and utilize the State advisory council, if a council is established under section 332 of the Act and § 426.50;

(b) After providing appropriate and sufficient notice to the public, conduct at least two public hearings in the State for the purpose of affording all segments of the public, including groups serving educationally disadvantaged adults, and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan;

(c) Make a thorough assessment of—

(1) The needs of adults, including educationally disadvantaged adults, eligible to be served as well as adults proposed to be served and those currently served by the program; and

(2) The capability of existing programs and institutions to meet those needs; and

(d) State the changes and improvements required in adult education to fulfill the purposes of the Act and the options for implementing these changes and improvements.

(Authority: 20 U.S.C. 1206a (a) (1) and (2), (b))

§ 426.12 What must the State plan contain?

(a) Consistent with the assessment described in § 426.11(c), a State plan shall, for the four-year period covered by the plan, described the following:

(1) The adult education needs of all segments of the adult population in the State identified in the assessment, including the needs of those adults who are educationally disadvantaged.

(2)(i)(A) The goals the SEA intends to achieve in meeting the needs described in paragraph (a)(1) of this section for the period covered by the plan.

(B) These goals must be designed to develop a statewide program in which the adult populations in the State, especially adults who are educationally disadvantaged, are served in a manner whereby they learn most effectively; and

(ii)(A) Proposed activities, methods, and strategies for reaching each goal, including the estimated percentages of funds under the State plan to be allocated to each goal; and

(B) The expected outcomes of programs, services, and activities.

(3) The curriculum, equipment, and instruments that are being used by instructional personnel in programs and how current these elements are.

(4) The means by which the delivery of adult education services will be significantly expanded (including efforts to reach typically underserved groups such as educationally disadvantaged adults, individuals of limited English proficiency, and adults with handicaps) through the use of agencies, institutions, and organizations other than the public school system, such as businesses, labor unions, libraries, institutions of higher education, public health authorities, employment or training programs, antipoverty programs, organizations providing assistance to the homeless, and community and voluntary organizations.

(5) The means by which representatives of the public and private sectors were involved in the development of the State plan and how they will continue to be involved in the implementation of the plan, especially in the expansion of the delivery of adult education services by cooperation and collaboration with those public and private agencies, institutions, and organizations.

(6) The capability of existing programs and institutions to meet the needs described in paragraph (a)(1) of this section, including the other Federal and non-Federal resources available to meet those needs.

(7) The outreach activities that the State intends to carry out during the period covered by the plan, including specialized efforts—such as flexible course schedules, auxiliary aids and services, convenient locations, adequate transportation, and child care services—to attract and assist meaningful participation in adult education programs.

(8)(i) The manner in which the SEA will provide for the needs of adults of limited English proficiency or no English proficiency by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(ii) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(iii) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(9) How the particular educational needs of adult immigrants, the incarcerated, adults with handicaps, the chronically unemployed, homeless adults, the disadvantaged, and minorities in the State will be addressed.

(10)(i) The progress the SEA has made in achieving the goals set forth in each State plan subsequent to the initial State plan filed in 1989; and

(ii) How the assessment of accomplishments and the findings of program reviews and evaluations required by section 352 of the Act and § 426.46

were considered in establishing the State's goals for adult education in the plan being submitted.

(11) The progress the SEA expects to make in achieving the purposes of the Act during the four-year period of the plan.

(12) The criteria the SEA will use in approving applications by eligible recipients and allocating funds made available under the Act to those recipients.

(13) The methods proposed for joint planning and coordination with programs conducted under applicable Federal and State programs, including the Carl D. Perkins Vocational Education Act, the Job Training Partnership Act, the Rehabilitation Act of 1973, the Educaton of the Handicapped Act, the Immigration Reform and Control Act of 1986, the Higher Education Act of 1965, and the Domestic Volunteer Service Act, to ensure maximum use of funds and to avoid duplication of services.

(14) The steps taken to utilize volunteers, particularly volunteers assigned to the Literacy Corps established under the Domestic Volunteer Service Act and volunteers trained in programs carried out under section 382 of the Act and 34 CFR part 437, but only to the extent that such volunteers supplement and do not supplant salaried employees.

(15) The measures to be taken to ensure that adult education programs, services, and activities under the Act will take into account the findings of program reviews and evaluations required by § 426.46.

CROSS-REFERENCE: See 34 CFR 426.22

(16) The SEA's policies, procedures, and activities for carrying out special experimental demonstration projects and teacher training projects that meet the requirements of § 426.33.

(17) The SEA's policies, procedures, and activities for carrying out corrections education and education for other institutionalized adults tht meet the reqiurements of § 426.32.

(18) The SEA's planned use of Federal funds for administrative costs under § 426.40(a), including any planned expenditures for a State advisory council under § 426.50.

(19) An SEA shall provide a summary of recommendations received and the SEA's responses to the recommendations made through the State plan development process required under § 426.11(b).

(b) A SEA that is prohibited by State law from awarding Federal funds by subgrant or contract to public or private agencies, organizations, or institutions, other than local educational agencies, shall describe in its State plan—

(1) The legal basis of this prohibition; and

(2) How public or private agencies, organizations, or institutions will otherwise be used for expanding the delivery of services.

(c) To be eligible to participate in the State-administered Workplace Literacy Program under section 371(b) of the Act, a SEA shall comply with the requirements in 34 CFR 433.10.

(d) To be eligible to participate in the State-administered English Literacy Program under section 372(a) of the Act, a SEA shall comply with the requirements in 34 CFR 434.10.

(e) In order for a State, or the local recipients within the State, to be eligible to apply for funds under the Adult Migrant Farmworker and Immigrant Education Program under section 381 of the Act and 34 CFR part 436, a SEA shall describe the types of projects appropriate for meeting the educational needs of adult migrant farmworkers and immigrants under section 381 of the Act.

(Approved under OMB Control No. 1830-0026)

(Authority: 20 U.S.C. 1204; 1205(c); 1206a(a)(2), (b)((1)(B), (c), (d); 1208; 1211(b)(3)(A); 1211a(a)(2); and 1213(a))

§ 426.13 What procedures does a State use to submit its State plan?

(a) A SEA shall submit its State plan to the Secretary not later than 90 days prior to the first program year for which the plan is in effect.

(b)(1) Not less than sixty days prior to submitting the State plan to the Secretary, the SEA shall give the State advisory council, if one is established under section 332 of the Act and § 426.50, an opportunity to review and comment on the plan.

(2) The SEA shall respond to all timely and substantive objections of the State advisory council and include with the State plan a copy of its response.

(c)(1) Not less than sixty days prior to submitting the State plan to the Secretary, the SEA shall give the following entities an opportunity to review and comment on the plan:

(i) State board or agency for vocational education.

(ii) State Job Training Coordinating Council under the Job Training Partnership Act.

(iii) State board or agency for postsecondary education.

(2) Comments (to the extent those comments are received in a timely fashion) of entities listed in paragraph (c)(1) of this section and the SEA's response must be included with the State plan.

(Approved under OMB Control No. 1830-0026)

(Authority: 20 U.S.C. 1206(b) and 1206a(a)(3) (A) and (B))

§ 426.14 When are amendments to a State plan required?

If an amendment to the State plan is necessary, the amendment must be submitted to the Secretary not later than 90 days prior to the program year of operation to which the amendment applies.

Cross-Reference: See 34 CFR 76.140

(Approved under OMB Control No. 1830-0026)

(Authority: 20 U.S.C. 1207(a))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 426.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's grant according to the formula in section 313(b) of the Act.

(Authority: 20 U.S.C. 1201b(b))

§ 426.21 How does the Secretary make reallotments?

(a) Any amount of any State's allotment under section 313(b) of the Act that the Secretary determines is not required, for the period the allotment is available, for carrying out that State's plan, is reallotted to other States on dates that the Secretary may fix.

(b) The Secretary determines any amounts to be reallotted on the basis of—

(1) Reports, filed by the States, of the amounts required to carry out their State plans; and

(2) Other information available to the Secretary.

(c) Reallotments are made to other States in proportion to those States' original allotments for the fiscal year in which allotments originally were made, unless the Secretary reduces a State's proportionate share by the amount the Secretary estimates will exceed the sum the State needs and will be able to use under its plan.

(d) The total of any reductions made under paragraph (c) of this section is reallotted among those States whose proportionate shares were not reduced.

(e)(1) Any amount reallotted to a State during a fiscal year is deemed part of the State's allotment for that fiscal year.

(2) A reallotment of funds from one State to another State does not extend the period of time in which the funds must be obligated.

(Authority: 20 U.S.C. 1201b(c))

§ 426.22 What criteria does the Secretary us in approving a State's description of efforts relating to program reviews and evaluations?

The Secretary considers the following criteria in approving a State's description of efforts relating to program reviews and evaluations under section 342(c)(13) of the Act and § 426.12(a)(15):

(a) The extent to which the State will have effective procedures for using the findings of program reviews and evaluations to identify, on a timely basis, those programs, services, and activities under the Act that are not meeting the educational goals set forth in the State plan and approved applications of eligible recipients.

(b) The adequacy of the State's procedures for effecting timely changes that will enable programs, services, and activities identified under paragraph (a) of this section to meet the educational goals in the State plan and approved applications of eligible recipients.

(c) The extent to which the State will continue to review those programs, activities, and services, and effect further changes as necessary to meet those educational goals.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1206a(c)(13) and 1207a)

§ 426.23 How does the Secretary approve State plans and amendments?

(a) The Secretary approves, within 60 days of receipt, a State plan or amendment that the Secretary determines complies with the applicable provisions of the Act and the regulations.

(b) In approving a State plan or amendment, the Secretary considers any information submitted in accordance with § 426.13 (b) and (c).

(c) The Secretary notifies the SEA, in writing, of the granting or withholding of approval.

(d) The Secretary does not finally disapprove a State plan or amendment without first affording the State reasonable notice and opportunity for a hearing.

(Authority: 20 U.S.C. 1206(b), 1206a(a)(3), and 1207(b))

Subpart D—How Does a State Make an Award to an Eligible Recipient?

§ 426.30 Who is eligible for a subgrant or contract?

The following eligible recipients may apply to the SEA for an award:

(a) A local educational agency (LEA)

(b) A public or private nonprofit agency, organization, or institution.

(c) An LEA or public or private nonprofit agency, organization, or institution apply on behalf of a consortium that includes a for-profit agency, organization, or institution that can make a significant contribution to attaining the objectives of the Act.

(Authority: 20 U.S.C. 1203a(a)(1), (2))

§ 426.31 How does a State award funds?

(a) In selecting local recipients, if appropriations under this program exceed the $115,367,000 appropriated in the Fiscal Year 1988 appropriation for the basic grant program, a SEA shall give preference to those local applicants that have demonstrated or can demonstrate a capability to recruit and serve educationally disadvantaged adults.

(b) A SEA shall award funds on the basis of applications submitted by eligible recipients.

(c) In reviewing a local application, a SEA shall determine that the application contains the following:

(1) A description of current programs, activities, and services receiving assistance from Federal, State, and local sources that provide adult education in the geographic area proposed to be served by the applicant.

(2) A description of cooperative arrangements (including arrangements with business, industry, and volunteer literacy organizations as appropriate) that have been made to deliver services to adults.

(3) Assurances that the adult educational programs, services, or activities that the applicant proposes to provide are coordinated with and not duplicative of programs, services, or activities made available to adults under other Federal, State, and local programs, including the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, the Rehabilitation Act of 1973, the Education of the Handicapped Act, the Indian Education Act, the Higher Education Act of 1965, and the Domestic Volunteer Service Act.

(4) Any other information the SEA considers necessary.

(d) In reviewing a local application, a SEA may consider the extent to which the application—

(1) Identifies the needs of the population proposed to be served by the applicant;

(2) Proposes activities that are designed to reach educationally disadvantaged adults;

(3) Describes a project that gives special emphasis to adult basic education;

(4) Describes adequate outreach activities, such as—

(i) Flexible schedules to accommodate the greatest number of adults who are educationally disadvantaged;

(ii) Location of facilities offering programs that are convenient to large concentrations of the adult populations identified by the State in its four-year State plan or how the locations of facilities will be convenient to public transportation; and

(iii) The availability of day care and transportation services to participants in the project;

(5) Describes proposed programs, activities, and services that address the identified needs;

(6) Describes the resources available to the applicant—other than Federal and State adult education funds—to meet those needs (e.g., funds provided under the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, the Rehabilitation Act of 1973, the Education of the Handicapped Act, the Indian Education Act, the Higher Education Act of 1965, or the Domestic Volunteer Service Act, and local cash or in-kind contributions); and

(7) Describes project objectives that can be accomplished within the amount of the applicant's budget request.

(e) An SEA may not approve an application from a public or private agency, organization, or institution other than an LEA unless the applicant—

(1) Provides assurance to the State that the applicable LEA, located in the same city, county, township, school district, or other political subdivision of the State to be served by the applicant has been consulted;

(2) Provides the applicable LEA the opportunity to comment on the application; and

(3) Provides the comments of the LEA and any responses as an attachment to the application.

(f) An SEA may not approve an application from a consortium that includes a for-profit agency, organization, or institution unless the State has first determined that—

(1) The for-profit entity can make a significant contribution to attaining the objectives of the Act;

(2) The LEA, or public or private nonprofit agency, organization, or institution, will enter into a contract with the for-profit agency, organization, or institution for the establishment or expansion of programs; and

(3) The applicant, if not an LEA, has met the requirements of paragraph (f) (1) through (3) of this section.

(g) If an SEA awards funds to a consortium that includes a for-profit agency, organization, or institution, the award must be made directly to the LEA or public or private nonprofit agency, organization, or institution that applies on behalf of the consortium.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1203a(a) and 1206a(c)(3))

§ 426.32 What are programs for corrections education and education for other institutionalized individuals?

(a) An SEA shall use not less than 10 percent of its grant for educational programs for criminal offenders in corrections institutions and for other institutionalized adults. Those programs may include—

(1) Academic programs for—

(i) Basic education with special emphasis on reading, writing, vocabulary, and arithmetic;

(ii) Special education programs as defined by State law;

(iii) Bilingual or English-as-a-second-language programs; and

(iv) Secondary school credit programs;

(2) Vocational training programs;

(3) Library development and library service programs;

(4) Corrections education programs, training for teacher personnel specializing in corrections education, particularly courses in social education, basic skills instruction, and abnormal psychology;

(5) Guidance and counseling programs;

(6) Supportive services for criminal offenders, with special emphasis on the coordination of educational services with agencies furnishing services to criminal offenders after their release; and

(7) Cooperative programs with educational institutions, community-based organizations of demonstrated effectiveness, and the private sector that are designed to provide education and training.

(b)(1) An SEA shall establish its own statewide criteria and priorities for administering programs for corrections education and education for other institutionalized adults.

(2) An SEA shall determine that an application proposing a project under paragraph (a) of this section contains the information in § 426.31(c) and any other information the SEA considers necessary.

(Authority: 20 U.S.C. 1203a(a)(3), (b)(1) and 1204)

§ 426.33 What are special experimental demonstration projects and teacher training projects?

(a) An SEA shall use not less than 10 percent of its grant for—

(1) Special projects that will be carried out in furtherance of the purposes of the Act, that will be coordinated with other programs funded under the Act, and that—

(i) Involve the use of innovative methods (including methods for educating adults with handicaps, homeless adults, and adults of limited English proficiency), systems, materials, or programs that may have national significance or will be of special value in promoting effective programs under the Act; or

(ii) Involve programs of adult education, including education for adults with handicaps, homeless adults, and adults of limited English proficiency, which are part of community school programs, carried out in cooperation with other Federal, State, or local programs that have unusual promise in promoting a comprehensive or coordinated approach to the problems of adults with educational deficiencies; and

(2) Training persons engaged, or preparing to engage, as personnel in programs designed to carry out the purposes of the Act.

(b)(1) An SEA shall establish its own statewide criteria and priorities for providing and administering special experimental demonstration projects and teacher training projects.

(2) The SEA shall determine that an application proposing a project under paragraph (a) of this section contains—

(i) The information in § 426.31(c);

(ii) Plans for continuing the activities and services under the project after completion of the project's funding under the Act; and

(iii) Any other information the SEA considers appropriate.

(Authority: 20 U.S.C. 1203a(a)(3) and 1208)

Subpart E—What Conditions Must be Met by a State?

§ 426.40 What are the State and local administrative costs requirements?

(a)(1) Beginning with the fiscal year 1991 grant (a grant that is awarded on or after July 1, 1991 from funds appropriated in the fiscal year 1991 appropriation), an SEA may use no more than 5 percent of its grant or $50,000—whichever is greater—for necessary and reasonable State administrative costs.

(2) For grants awarded from funds appropriated for fiscal years prior to fiscal year 1991 (grants awarded before July 1, 1991), an SEA may determine what percent of its grant is necessary and reasonable for State administrative costs.

(b)(1) At least 95 percent of an eligible recipient's award from the SEA must be expended for adult education instructional activities.

(2) The remainder may be used for local administrative costs—noninstructional expenses, including planning, administration, evaluation, personnel development, and coordination—that are necessary and reasonable.

(3) In cases where the administrative cost limits under paragraph (b)(2) of this section would be insufficient for adequate planning, administration, evaluation, personnel development,

and coordination of programs supported under the Act, the SEA shall negotiate with local grant recipients in order to determine an adequate level of funds to be used for noninstructional purposes.

(Authority: 20 U.S.C. 1203b, and 1205(c))

§ 426.41 What are the cost-sharing requirements?

(a) The Federal share of expenditures made under a State plan for any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico may not exceed—

(1) 90 percent of the costs of programs carried out with the fiscal year 1988 grant (a grant that is awarded on or after July 1, 1988 from funds appropriated in the fiscal year 1988 appropriation);

(2) 90 percent of the cost of programs carried out with the fiscal year 1989 grant (a grant that is awarded on or after July 1, 1989 from funds appropriated in the fiscal year 1989 appropriation);

(3) 85 percent of the costs of programs carried out with the fiscal year 1990 grant (a grant that is awarded on or after July 1, 1990 from funds appropriated in the fiscal year 1990 appropriation);

(4) 80 percent of the cost of programs carried out with the fiscal year 1991 grant (a grant that is awarded on or after July 1, 1991 from funds appropriated in the fiscal year 1991 appropriation); and

(5) 75 percent of the costs of programs carried out with the fiscal year 1992 grant (a grant that is awarded on or after July 1, 1992 from funds appropriated in the fiscal year 1992 appropriation) and from each grant thereafter.

(b) The Federal share for American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Republic of Palau), and the Virgin Islands is 100 percent.

(c) The Secretary determines the non-Federal share of expenditures under the State plan by considering—

(1) Expenditures from State, local, and other non-Federal sources for programs, services, and activities of adult education, as defined in the Act, made by public or private entities that receive from the State Federal funds made available under the Act or State funds for adult education; and

(2) Expenditures made directly by the State for programs, services, and activities of adult education as defined in the Act.

(Authority: 20 U.S.C. 1209(a); 48 U.S.C. 1681)

§ 426.42 What is the maintenance of effort requirement?

(a)(1)(i) *Basic standard.* Except as provided in § 426.43, a State is eligible for a grant from appropriations for any fiscal year, only if the Secretary determines that the State has expended for adult education from non-Federal sources during the second preceding fiscal year (or program year) an amount not less than the amount expended during the third preceding fiscal year (or program year).

(ii) The Secretary determines maintenance of effort on a per student expenditure basis or on a total expenditure basis.

(2) *Meaning of "second and third preceding fiscal years (or program years)."* For purposes of determining maintenance of effort, the "second preceding fiscal year (or program year)" is the fiscal year (or program year) two years prior to the year of the grant for which the Secretary is determining the State's eligibility. The "third preceding fiscal year (or program year)" is the fiscal year (or program year) three years prior to the year of the grant for which the Secretary is determining the State's eligibility.

EXAMPLE

Computation based on fiscal year. If a State chooses to use the fiscal year as the basis for its maintenance of effort computations, the Secretary determines whether a State is eligible for the fiscal year 1989 grant (a grant that is awarded on or after July 1, 1989 from funds appropriated in the fiscal year 1989 appropriation) by comparing expenditures from the second preceding fiscal year—year 1987 (October 1, 1986—September 30, 1987)—with expenditures from the third preceding fiscal year—year 1986 (October 1, 1985—September 30, 1986). If there has been decrease in expenditures from fiscal year 1986 to fiscal year 1987, the

State has maintained effort and is eligible for its fiscal year 1989 grant.

Computation based on program year. If a State chooses to use a program year running from July 1 to June 30 as the basis for its maintenance of effort computation, the Secretary determines whether a State is eligible for funds for the fiscal year 1989 grant by comparing expenditures from the second preceding program year—year 1987 (July 1, 1986–June 30, 1987)—with expenditures from the third preceding program year—year 1986 (July 1, 1985–June 30, 1986). If there has been no decrease in expenditures from program year 1986 to program year 1987, the State has maintained effort and is eligible for its fiscal year 1989 grant.

(b) *Expenditures to be considered.* In determining a State's compliance with the maintenance of effort requirement, the Secretary considers the expenditures described in § 426.41(c).

(Authority: 20 U.S.C. 1209(b))

§ 426.43 Under what circumstances may the Secretary waive the maintenance of effort requirement?

(a) The Secretary may waive, for one year only, the maintenance of effort requirement in § 426.42 if the Secretary determines that a waiver would be equitable due to exceptional or uncontrolled circumstances. These circumstances include, but are not limited to, the following:

(1) A natural disaster.

(2) An unforeseen and precipitous decline in financial resources.

(b) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(Authority: 20 U.S.C. 1209(b)(2))

§ 426.44 How does a State request a waiver of the maintenance of effort requirement?

An SEA seeking a waiver of the maintenance of effort requirement in § 426.42 shall—

(a) Submit to the Secretary a request for a waiver; and

(b) Include in the request—

(1) The reason for the request; and

(2) Any additional information the Secretary may require.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1209(b)(2))

§ 426.45 How does the Secretary compute maintenance of effort in the event of a waiver?

If a State has been granted a waiver of the maintenance of effort requirement that allows it to receive a grant from appropriations for a fiscal year, the Secretary determines whether the State has met that requirement for the grant to be awarded for the year after the year of the waiver by comparing the amount spent for adult education from non-Federal sources in the second preceding fiscal year (or program year) with the amount spent in the fourth preceding fiscal year (or program year).

EXAMPLE

Because exceptional or uncontrollable circumstances prevented a State from maintaining effort in fiscal year 1987 (October 1, 1986–September 30, 1987)—or in a program year 1987 running from July 1, 1986–June 30, 1987—at the level of fiscal year 1986 (October 1, 1985–September 30, 1986)—or program year 1986 (July 1, 1985–June 30, 1986), the Secretary grants the State a waiver of the maintenance of effort requirement that permits the State to receive its fiscal year 1989 grant (a grant that is awarded on or after July 1, 1939 from funds appropriated in the fiscal year 1989 appropriation). In order to determine whether a State has met the maintenance of effort requirement and therefore is eligible to receive its fiscal year 1990 grant (the grant to be awarded for the year after the year of the waiver), the Secretary compares the State's expenditures from the second preceding fiscal year (or program year)—fiscal year 1988 (October 1, 1987–September 30, 1988) or program year 1988 (July 1, 1987–June 30, 1988)—with expenditures from the fourth preceding fiscal year (or program year—year 1986. If the expenditures from fiscal year (or program year) 1988 are not less than the expenditures from fiscal year (or program year) 1986, the State has maintained effort and is eligible for its fiscal year 1990 grant.

(Authority: 20 U.S. 1209(b)(2))

§ 426.46 What requirements for program reviews and evaluations must be met by a State?

(a) An SEA shall provide for program reviews and evaluations of all State-administered adult education programs, services, and activities it assists under the Act. The SEA shall use its program reviews and evaluations to

best copy available

sist LEAs and other recipients of
nds in planning and operating the
st possible programs of adult educa-
n and to improve the State's pro-
ams of adult education.

b) In reviewing programs, an SEA
all, during the four-year period of
e State plan, gather and analyze
ta on the effectiveness of all State-
ministered adult education pro-
ams, services, and activities—includ-
g standardized test data—to deter-
ne the extent to which—

1) The State's adult education pro-
ams are achieving the goals in the
ate plan, including the goal of serv-
g educationally disadvantaged
ults; and

2) Grant recipients have improved
eir capacity to achieve the purposes
the Act.

c)(1) An SEA shall, during the four-
ar period of the State plan, evaluate
qualitative and quantitative terms
e effectiveness of programs, services,
d activities conducted by at least
e-third of the local recipients of
nds.

2) The recipients the State evalu-
es must be representative of all re-
pients in the State.

3) An evaluation must consider the
lowing factors:

i) Planning and content of the pro-
ams, services, and activities.

ii) Curriculum, instructional materi-
, and equipment.

iii) Adequacy and qualifications of
personnel.

iv) Effect of the program on the
bsequent work experience of partici-
nts, completers, and graduates.

v) Achievement of the goals set
th in the State plan.

vi) Extent to which educationally
advantaged adults are being served.

vii) Extent to which local recipients
funds have improved their capacity
achieve the purposes of the Act.

viii) Other factors that affect pro-
am operations, as determined by the
A.

d)(1) Within 90 days of the close of
h program year, the SEA shall
mit the following to the Secretary:

) The information in
26.10(b)(10).

i) A report on the SEA's activities
ler paragraph (b) of this section.

(iii) A report on the SEA's activities under paragraph (c) of this section.

(2) The reports described in paragraphs (d)(1) (ii) and (iii) of this section must include—

(i) The results of any program reviews and evaluations performed during the program year, and a description of how the SEA used the program review and evaluation process to make necessary changes to improve programs; and

(ii) The comments and recommendations of the State advisory council, if a council has been established.

(e) If an SEA has established a State advisory council on adult education under § 426.50, the SEA shall—

(1) Obtain approval of the plan for program reviews and evaluations from the State advisory council; and

(2) Inform the State advisory council of the results of program reviews and evaluations so that the State advisory council may perform its duties under section 332(f)(3) of the Act.

NOTE TO § 426.46: In addition to the Adult Education State-administered Basic Grant Program in this part 426, State-administered adult education programs include the State-administered Workplace literacy Program (See 34 CFR part 433) and the State-administered English Literacy Program (See 34 CFR part 434).

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1205a(f)(3) and 1207a)

Subpart F—What are the Administrative Responsibilities of a State?

§ 426.50 What are a State's responsibilities regarding a State advisory council on adult education?

(a) A State that receives funds under section 313 of the Act may—

(1) Establish a State advisory council; or

(2) Designate an existing body as the State advisory council.

(b) If a State elects to establish or designate a State advisory council on adult education, the following provisions apply:

(1) The State advisory council must comply with §§ 426.51 and 426.52.

(2) The Governor appoints members to the State advisory council in ac-

cordance with section 332(e) of the Act.

(3) Costs incurred for a State advisory council must be counted as part of the allowable State-administrative costs under the Act.

(4) The Governor determines the amount of funding available to a State advisory council.

(5)(i) A State advisory council determines its own staffing needs, within the budget established by the Governor.

(ii) A State advisory council's staffing may include professional, technical, and clerical personnel as may be necessary to enable the council to carry out its functions under the Act.

(6) Members of a State advisory council and its staff, while serving on the business of the council, may receive subsistence, travel allowances, and compensation in accordance with State law and regulations and State practices applicable to persons performing comparable duties and services.

(Authority: 20 U.S.C. 1205a (a), (d), (e))

§ 426.51 What are the membership requirements of a State advisory council on adult education?

(a)(1) The membership of a State advisory council may broadly represent citizens and groups within the State having an interest in adult education. The council must consist of representatives of—

(i) Public education;

(ii) Private and public sector employment;

(iii) Recognized State labor organizations;

(iv) Private, voluntary, or community literacy organizations;

(v) Libraries; and

(vi) State economic development agencies.

(2) The State shall ensure that there is appropriate representation on the State advisory council of—

(i) Urban and rural areas;

(ii) Women;

(iii) Persons with handicaps; and

(iv) Racial and ethnic minorities.

(b)(1) An SEA shall certify to the Secretary the establishment of, and membership of, its State advisory council.

(2) The certification must be submitted to the Secretary prior to the beginning of any program year in which the State desires to receive a grant under the Act.

(c) Members must be appointed for fixed and staggered terms and may serve until their successors are appointed. Any vacancy in the membership of the council must be filled in the same manner as the original appointment. Any member of the council may be removed for cause in accordance with procedures established by the council.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1205a (a)(1), (b), and (c))

§ 426.52 What are the responsibilities of a State advisory council on adult education?

(a)(1) The State advisory council shall, using procedures agreed upon, elect a chairperson.

(2) The State advisory council shall adopt rules that govern the number, time, place, and conduct of meetings as well as council operating procedures. The rules must provide for at least one public meeting each year at which the general public is given an opportunity to express views concerning adult education programs in the State.

(b) A State advisory council shall—

(1) Meet with the SEA or its representative during the planning year to advise on the development of the State plan;

(2) Review the State plan before it is submitted to the Secretary and, if the State advisory council has substantial disagreement with the final State plan, file timely objections with the SEA;

(3) Advise the SEA on—

(i) Policies the State should pursue to strengthen adult education; and

(ii) Initiatives and methods the private sector could undertake to assist the State's improvement of adult education programs; and

(4)(i) Approve the plan for the program reviews and evaluations required in section 352 of the Act and § 426.46 and participate in implementing and disseminating the program reviews and evaluations. In approving the plan for the program reviews and evaluations, the State advisory council shall ensure that persons knowledgeable of the daily operation of adult education programs are involved;

(ii) Advise the Governor, the State legislature, and the general public of the State with respect to the findings of the program reviews and evaluations; and

(iii) Include in any reports of the program reviews and evaluations the council's comments and recommendations.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1205a (d) and (f), 1206a(a)(3)(B))

§ 426.53 May a State establish an advisory body other than a State advisory council?

(a) A State may establish an advisory body that is funded solely from non-Federal sources.

(b) The advisory body described in paragraph (a) of this section is not required to comply with the requirements of section 332 of the Act and this part.

(c) The non-Federal funds used to support the advisory body may not be included in the non-Federal share of expenditures under the State plan described in § 426.41(c).

(Authority: 20 U.S.C. 1205a and 1209)

PART 431—NATIONAL ADULT EDUCATION DISCRETIONARY PROGRAM

Subpart A—General

Sec.
431.1 What is the National Adult Education Discretionary Program?
431.2 Who is eligible to apply for an award under the National Adult Education Discretionary Program?
431.3 What regulations apply to this program?
431.4 What definitions apply to this program?
431.5—431.9 [Reserved]

Sec.

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

431.10 What types of projects may be funded?
431.11 How does the Secretary establish priorities for this program?
431.12—431.19 [Reserved]

Subpart C—[Reserved]

431.20—431.29 [Reserved]

Subpart D—How Does the Secretary Make an Award?

431.30 How does the Secretary evaluate an application?
431.31 What selection criteria does the Secretary use?
431.32 How does the Secretary select an application for funding?
431.33—431.39 [Reserved]

Subpart E—What Condition Must Be Met by a Recipient?

431.40 What condition must be met under this program?
431.41—431.49 [Reserved]

AUTHORITY: Sec. 309 of the Adult Education Act, as amended by Pub. L. 98-511; 20 U.S.C.1207a, unless otherwise noted.

SOURCE: 50 FR 29358, July 18, 1985, unless otherwise noted.

Subpart A—General

§ 431.1 What is the National Adult Education Discretionary Program?

The National Adult Education Discretionary Program supports projects that contribute to the improvement and expansion of adult education.

(Authority: Sec. 309(a)(1); 20 U.S.C. 1207a(a)(1))

§ 431.2 Who is eligible to apply for an award under the National Adult Education Discretionary Program?

The following are eligible to apply for grants, contracts, or cooperative agreements under this program:

(a) Public and private institutions, agencies, and organizations.

(b) Individuals.

(c) Business concerns.

(Authority: Sec. 309(a)(2); 20 U.S.C. 1207a(a)(2))

§ 431.3 What regulations apply to this program?

The following regulations apply to the National Adult Education Discretionary Program:

(a) The regulations in 34 CFR Part 425.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1201 *et seq.*)

§ 431.4 What definitions apply to this program?

The definitions in 34 CFR 425.3 apply to this program.

(Authority: 20 U.S.C. 1201 *et. seq.*)

§§ 431.5—431.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 431.10 What types of projects may be funded?

(a) The Secretary directly or through grants, contracts, or cooperative agreements supports projects for the improvement and expansion of adult education. Funds may be used for—

(1) Applied research;

(2) Development;

(3) Demonstration;

(4) Dissemination;

(5) Evaluation; and

(6) Related activities.

(b) Projects may include, but are not limited to—

(1) Improving adult education opportunities for elderly individuals and adult immigrants;

(2) Evaluating educational technology and computer software suitable for providing instruction to adults; and

(3) Supporting exemplary cooperative adult education programs that combine the resources of businesses, schools, and community organizations.

(Authority: Sec. 309(a)(1); 20 U.S.C. 1207a(a)(1))

§ 431.11 How does the Secretary establish priorities for this program?

(a) The Secretary announces, through one or more notices published in the FEDERAL REGISTER, the priorities for this program, if any, from the topics described in § 431.10, and the manner in which those priorities will be implemented.

(b) The Secretary may establish a separate competition for one or more of the priorities selected. If a separate competition is established for one or more priorities, the Secretary may reserve all applications that relate to those priorities for review as part of the separate competition.

(Authority: 20 U.S.C. 1201 *et seq.*)

§§ 431.12—431.19 [Reserved]

Subpart C—[Reserved]

§§ 431.20—431.29 [Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 431.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 431.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 431.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion are indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved points among the criteria in § 431.31.

(Authority: 20 U.S.C. 1201 *et seq.*)

§ 431.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application.

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the application plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Member of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the subject, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: See 34 CFR 75.590 (Evaluation by grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *National need.* (20 points)

(1) The Secretary reviews each application to determine how it addresses a national need in adult education.

(2) The Secretary looks for information that describes—

(i) The need in terms of the problem rather than the symptom of the problem;

(ii) Who or what will be helped by the project;

(iii) How the project will improve and expand adult education; and

(iv) The extent to which the project involves creative or innovative techniques and concepts.

(g) *Dissemination plan.* (10 points)

(1) The Secretary reviews each application for information that shows

the quality of the dissemination plan for the project.

(2) The Secretary looks for information that shows—

(i) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(ii) A clear description of the project outcomes; and

(iii) A detailed description of how information and materials will be disseminated.

(Authority: Sec. 309; 20 U.S.C. 1207a)

§ 431.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in § 431.31, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding on the basis of geographic distribution if doing so would contribute to achieving the purposes of this discretionary program.

(c) The Secretary may decline to fund any project that is eligible for funding under a different competition of Department of Education program.

(Authority: Sec. 309; 20 U.S.C. 1207a)

§§ 431.33—431.39 [Reserved]

Subpart E—What Condition Must Be Met by a Recipient?

§ 431.40 What condition must be met under this program?

A recipient shall not charge participants for their participation in the projects assisted under this program.

(Authority: Sec. 309(a)(2); (20 U.S.C. 1207a(a)(2))

§§ 431.41—431.49 [Reserved]

PART 432—NATIONAL WORKPLACE LITERACY PROGRAM

Subpart A—General

Sec.
432.1 What is the National Workplace Literacy Program?
432.2 Who is eligible for an award?
432.3 What activities may the Secretary fund?
432.4 What regulations apply?
432.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

432.10 Are preapplications required?
432.11 How does the Secretary consider a preapplication?

Subpart C—How Does the Secretary Make an Award?

432.20 What priorities may the Secretary establish?
432.21 How does the Secretary evaluate an application?
432.22 What selection criteria does the Secretary use?
432.23 What additional factor does the Secretary consider?

Subpart D—What Conditions Must be Met After an Award?

432.30 What other requirements must be met under this program?
432.31 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

AUTHORITY: 20 U.S.C. 1211(a), unless otherwise noted.

SOURCE: 54 FR 34418, Aug. 18, 1989, unless otherwise noted.

Subpart A—General

§ 432.1 What is the National Workplace Literacy Program?

The National Workplace Literacy Program provides assistance for demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships between business, industry, or labor organizations and educational organizations.

(Authority: 20 U.S.C. 1211(a)(1))

§ 432.2 Who is eligible for an award?

(a) Awards are provided to exemplary partnerships between—

(1) A business, industry, or labor o ganization, or private industry counc and

(2) A State educational agen (SEA), local educational agency (LEA

institution of higher education, or school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) A partnership shall include as partners at least one entity from paragraph (a)(1) of this section and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Authority: 20 U.S.C. 1211(a)(4)(A))

§ 432.3 What activities may the Secretary fund?

The Secretary provides grants or cooperative agreements to projects designed to improve the productivity of the workforce through improvement of literacy skills in the workplace by—

(a) Providing adult literacy and other basic skills services and activities;

(b) Providing adult secondary education services and activities that may lead to the completion of a high school diploma or its equivalent;

(c) Meeting the literacy needs of adults with limited English proficiency;

(d) Upgrading or updating basic skills of adult workers in accordance with changes in workplace requirements, technology, products, or processes;

(e) Improving the competency of adult workers in speaking, listening, reasoning, and problem solving; or

(f) Providing educational counseling, transportation, and child care services for adult workers during nonworking hours while the workers participate in the project.

(Authority: 20 U.S.C. 1211(a)(3))

§ 432.4 What regulations apply?

The following regulations apply to the National Workplace Literacy Program:

(a) The regulations in this part 432.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1211(a))

§ 432.5 What definitions apply?

(a) The definitions in 34 CFR 425.4 apply to this part.

(b) The following definitions also apply to this part:

Adult worker means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under State law, and whose receipt of project services is expected to result in new employment, enhanced skills related to continued employment, career advancement, or increased productivity.

Area vocational school means—

(1) A specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(2) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to individuals who are available for study in preparation for entering the labor market;

(3) A technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market; or

(4) The department or division of a junior college or community college or university operating under the policies of the State board and that provides vocational education in no less than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if, in the case of a school, department, or division described in paragraphs (3) and (4) of this definition it admits as regular students both individuals who have completed high

school and individuals who have left high school.

(Authority: 20 U.S.C. 2471)

Business and industry organizations include, but are not limited to—

(1) For-profit businesses or industrial concerns;

(2) Nonprofit businesses or industrial concerns, such as hospitals and nursing homes;

(3) Associations of business and industry organizations, such as local or State Chambers of Commerce;

(4) Associations of private industry councils; and

(5) Educational associations—such as the American Association for Adult and Continuing Education, the American Council on Education, the National Association for Bilingual Education, the National Association of Independent Colleges and Universities, or the National Association of Technical and Trade Schools.

Contractor means an individual or organization other than a partner that provides specific and limited services, equipment, or supplies to a partnership under a contractual agreement.

Employment and training agency includes any agency that provides—as a substantial portion of its activity—employment and training services, either directly or through contract.

Helping organization means an entity other than a partner that voluntarily assists a partnership by providing services, technical assistance, or cash or in-kind contributions to the project. Helping organizations may not be recipients of funds from partners or serve as contractors.

Partner means an entity included in the list of entities in § 432.2(a) (1) or (2).

Private industry council means the private industry council established under section 102 of the Job Training Partnership Act (29 U.S.C. 1512).

Site means an entity other than a partner that participates in a project by providing adult workers to be trained and, at the site's option, space for this training. A site may not be a recipient of funds from partners or serve as a contractor.

(Authority: 20 U.S.C. 1211(a))

Subpart B—How Does One Apply for an Award?

§ 432.10 Are preapplications required?

The Secretary may require applicants to submit preapplications by including that requirement in an application notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1211(a))

§ 432.11 How does the Secretary consider a preapplication?

(a) The Secretary considers a preapplication if—

(1) The applicant complies with the procedural rules that govern submission of the preapplication; and

(2) The preapplication is submitted in response to an application notice that requires preapplications.

(b) If the Secretary requires preapplications and an applicant does not preapply, the applicant may not apply for a grant.

(c) If an applicant submits a preapplication—

(1) The Secretary—

(i) Informs the applicant that it is eligible and encourages it to apply for a grant;

(ii) Informs the applicant that it is eligible but does not encourage it to apply for a grant; or

(iii) Informs the applicant that it is ineligible for assistance, and explains why the applicant is ineligible; and

(2) An applicant may apply for a grant even if the Secretary has not encouraged it to apply, as described in paragraph (c)(1)(ii) of this section.

(Authority: 20 U.S.C. 1211(a))

Subpart C—How Does the Secretary Make an Award?

§ 432.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the FEDERAL REGISTER the priorities for this program, if any, from the types of projects described in paragraph (b) of this section.

(b) Priority may be given to projects training adult workers who have inadequate basic skills and who—

(1) Are currently unable to perform their jobs effectively or are ineligible for career advancement due to an identified lack of basic skills;

(2) Are employed in industries retooling with high technology and for whom training in basic skills is expected to result in continued employment;

(3) Require training in English-as-a-second-language in order to increase productivity, to continue employment, or to be eligible for career advancement; or

(4) Are employed in an industry adversely impacted by competitiveness in the world economy and for whom training is expected to result in the increased competitiveness of that industry in world markets.

(Authority: 20 U.S.C. 1211(a))

§ 432.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 432.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 432.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved points among the criteria in § 432.22.

(Authority: 20 U.S.C. 1211(a))

§ 432.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews each application to determine the extent to which the project—

(1) Demonstrates a strong relationship between skills taught and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace;

(2) Is targeted to adults with inadequate skills for whom the training described is expected to mean new employment, continued employment, career advancement, or increased productivity;

(3) Includes support services, based on cooperative relationships within the partnership and from helping organizations, necessary to reduce barriers to participation by adult workers. Support services could include educational counseling, transportation, and child care during non-working hours while adult workers are participating in a project; and

(4) Demonstrates the active commitment of all partners to accomplishing project goals.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The extent to which the project will focus on demonstrated needs for workplace literacy training of adult workers;

(2) The adequacy of the applicant's documentation of the needs to be addressed by the project;

(3) How those needs will be met by the project; and

(4) The benefits to adult workers and their industries that will result from meeting those needs.

(c) *Quality of training.* (15 points) The Secretary reviews each application to determine the quality of the training to be provided by the project, including the extent to which the project will—

(1) Use curriculum materials that are designed for adults and that reflect the needs of the workplace;

(2) Use individualized educational plans developed jointly by instructors and adult learners;

(3) Take place in a readily accessible environment conducive to adult learning; and

(4) Provide training through the partner classified under § 432.2(a)(2), unless transferring this activity to the partner classified under § 432.2(a)(1) is necessary and reasonable within the framework of the project.

(d) *Plan of operation.* (12 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes—

(i) A description of the respective roles of each member of the partnership in carrying out the plan;

(ii) A description of the activities to be carried out by any contractors under the plan;

(iii) A description of the respective roles, including any cash or in-kind contributions, of helping organizations; and

(iv) A description of the respective roles of any sites;

(3) How well the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(e) *Applicant's experience and quality of key personnel.* (10 points) (1) The Secretary reviews each application to determine the extent of the applicant's experience in providing literacy services to working adults.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications under paragraphs (e)(2) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured;

(4) Include evaluation of effects on job advancement, job performance (including, for example, such elements as productivity, safety and attendance), and job retention; and

(5) Are systematic throughout the project period and provide data that can be used by the project on an ongoing basis for program improvement.

(g) *Budget and cost-effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable and necessary in relation to the objectives of the project; and

(3) The applicant has minimized the purchase of equipment and supplies in order to devote a maximum amount of resources to instructional services.

(Approved under OMB Control No. 1830-0507)

(Authority: 20 U.S.C. 1211(a))

§ 432.23 What additional factor does the Secretary consider?

In addition to the criteria in § 432.22, the Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 1211(a))

Subpart D—What Conditions Must Be Met After an Award?

§ 432.30 What other requirements must be met under this program?

(a) An applicant shall use funds to supplement and not supplant funds otherwise available for the purposes of this program.

(b) A project may include—

(1) A start-up period between the time the project begins and the time services are provided to adult workers; and

(2) An operational period during which these services are provided.

(c) In partnerships in which either an SEA or an LEA is the grantee, an award under this program may be used to pay—

(1) 100 percent of the administrative costs incurred by an SEA or an LEA in establishing projects during the start-up period referenced in paragraph (b)(1) of this section; and

(2) 70 percent of the costs of a project during the operational period referenced in paragraph (b)(2) of this section.

(d) In partnerships in which any other entity is the grantee, an award under this program may be used to pay 70 percent of costs incurred in establishing and operating the project throughout the period of the grant.

(e)(1) A project's start-up period may not last longer than 90 days; and

(2) Applicants shall minimize the start-up period, if any, proposed for their projects.

(Authority: 20 U.S.C. 1211(a)(2) and (4)(E))

§ 432.31 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

(a) Projects serving adults with limited English proficiency or no English proficiency shall provide for the needs of these adults by teaching literacy skills needed in the workplace.

(b) Projects may teach workplace literacy skills—

(1) To the extent necessary, in the native language of these adults; or

(2) Exclusively in English.

(c) Projects must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1206a(d) and 1211(a))

PART 433—STATE-ADMINISTERED WORKPLACE LITERACY PROGRAM

Subpart A—General

Sec.

433.1 What is the State-administered Workplace Literacy Program?
433.2 Who is eligible for an award?
433.3 What kinds of activities may be assisted?
433.4 What regulations apply?
433.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

433.10 What must the State plan contain?

Subpart C—How Does the Secretary Make a Grant to a State?

433.20 How does the Secretary make allotments?
433.21 How does the Secretary make reallotments?

Subpart D—How Does an Applicant Apply to a State for an Award?

433.30 Who is eligible to apply to a State for an award?
433.31 How does a State carry out the State-administered Workplace Literacy Program?
433.32 What are the local application requirements?

Subpart E—What Post-Award Conditions Must Be Met by a State and Its Subgrantees and Contractors?

433.50 What other requirements must be met under this program?
433.51 What are the program review and evaluation requirements?
433.52 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

AUTHORITY: 20 U.S.C. 1211a(b), unless otherwise noted.

SOURCE: 54 FR 34421, Aug. 18, 1989, unless otherwise noted.

Subpart A—General

§ 433.1 What is the State-administered Workplace Literacy Program?

When the annual appropriation for workplace literacy equals or exceeds $50,000,000, the State-administered Workplace Literacy Program provides financial assistance for adult education programs that teach literacy skills needed in the workplace through education partnerships between business, industry, or labor organizations and educational organizations.

(Authority: 20 U.S.C. 1211(b))

§ 433.2 Who is eligible for an award?

(a) A State educational agency (SEA) is eligible for an award if the Secretary has approved the State plan and application submitted in accordance with section 342 of the Act and 34 CFR 426.10 through 426.13, and the State plan meets the requirements in § 433.10.

(b) If a State is ineligible to receive its allotment under this program, the Secretary uses the State's allotment to make direct grants to applicants in that State who are qualified to teach literacy skills needed in the workplace. To make those awards, the Secretary uses the procedures described for the National Workplace Literacy Program in 34 CFR part 432.

(Authority: 20 U.S.C. 1211(b) (3), (6))

§ 433.3 What kinds of activities may be assisted?

(a) Under the State-administered Workplace Literacy Program the Secretary makes allotments to an SEA to pay the Federal share of the cost of adult education programs that teach literacy skills needed in the workplace through partnerships between the entities in § 433.30(a) (1) and (2).

(b) A State shall assist partnership projects that are designed to improve the productivity of the workforce through improvement of literacy skills needed in the workplace through the activities described in 34 CFR 432.3 (a) through (f).

(Authority: 20 U.S.C. 1211(b) (4), (5))

§ 433.4 What regulations apply?

The following regulations apply t the State-administered Workplace Li eracy Program:

(a) The regulations in this part 43

(b) The regulations in 34 CFR pa 425.

(Authority: 20 U.S.C. 1211(b))

§ 433.5 What definitions apply?

(a) The definitions in 34 CFR 432 apply to this part.

(b) The following definition also a plies to this part:

Partner means an entity included the list of entities in § 433.30(a) (1) (2).

(Authority: 20 U.S.C. 1211(b))

Subpart B—How Does a State Appl for a Grant?

§ 433.10 What must the State plan co tain?

To receive a grant under the Stat administered Workplace Literacy Pr gram, an SEA shall include in its Sta plan, submitted to the Secretary in a cordance with 34 CFR 426.10, a d scription of—

(a) The requirements for State a proval of funding of a local workpla literacy project;

(b) The procedures under which a plications for that funding may submitted; and

(c) The method by which the SE will obtain an annual third-party ev uation of student achievement in, a the overall effectiveness of the ser ices provided by, all projects that r ceive funding from the State's gra under the State-administered Wor place Literacy Program.

(Approved under OMB Control No. 18 0026)

(Authority: 20 U.S.C. 1211(b)(3)(A))

Subpart C—How Does the Secretar Make a Grant to a State?

§ 433.20 How does the Secretary make lotments?

The Secretary determines t amount of each State's allotment cording to a formula in section 371(b)(7)(B) of the Act.

(Authority: 20 U.S.C. 1211(b)(7)(B))

§ 433.21 How does the Secretary make reallotments?

(a)(1) At the end of each fiscal year, the Secretary reallocates the portion of any State's allotment that—

(i) Exceeds 10 percent of the State's allotment under this program for the fiscal year; and

(ii) Was not obligated by the end of the fiscal year.

(2) A State may not obligate any portion of the excess described in paragraphs (a)(1) (i) and (ii) of this section after the end of the fiscal year.

(b) The Secretary reallots funds among the other States that themselves are not described in paragraph (a) of this section in the same proportion as each State's allocation for the fiscal year described in paragraph (a) of this section.

(c) Any amount reallotted to a State during a fiscal year is deemed part of the State's allotment for that fiscal year.

(d) Any amount that a State carries over from a prior year's allotment is deemed part of the State's allotment for the year into which funds are carried.

(e) In determining whether a State has obligated at least 90 percent of its allotment for a fiscal year, the Secretary considers as part of the State's allotment any funds reallotted to the State during that year or carried over from a prior year allotment.

(Authority: 20 U.S.C. 1211(b)(7)(C))

Subpart D—How Does an Applicant Apply to a State for an Award?

§ 433.30 Who is eligible to apply to a State for an award?

(a) Subgrants or contracts may be provided by the SEA to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) The State educational agency, a local educational agency (LEA), an institution of higher education, or a school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) Partnerships must include at least one entity listed in paragraph (a)(1) of this seciton and one entity listed in paragraph (a)(2) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 1211(b)(5))

§ 433.31 How does a State carry out the State-administered Workplace Literacy Program?

(a) An SEA carries out the program by—

(1) Providing State administration of the grant; and

(2) Awarding subgrants or contracts to eligible partnerships.

(b) The SEA may not use program funds for the administrative costs it incurs in carrying out its responsibilities under paragraph (a) of this section.

(c) If an SEA awards a subgrant or contract to a partnership in which the SEA is a partner, the SEA shall—

(1) Take an active role in the partnership in addition to its administrative responsibilities under paragraph (a) of this section; and

(2) Serve as a full and equal partner with other members of the partnership.

(d) An SEA may use program funds for necessary and reasonable administrative costs incurred in performing its role as a partner in a project described in paragraph (c) of this section.

(Authority: 20 U.S.C. 1211(b))

§ 433.32 What are the local application requirements?

A local partnership application, submitted to an SEA for funding under the State-administered Workplace Literacy Program, must contain the information in section 371(a)(4) of the Act.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1211(b)(5))

Subpart E—What Post-Award Conditions Must Be Met by a State and Its Subgrantees and Contractors?

§ 433.50 What other requirements must be met under this program?

(a) The Federal share of expenditures for projects funded under the State-administered Workplace Literacy Program is paid from the State's allotment under the program.

(b) A State Educational agency may reserve a portion of its allotment to pay 100 percent of the costs incurred by the SEA in obtaining evaluations required in § 433.10(c).

(c) A project funded by the SEA may include—

(1) A start-up period between the time the project begins and the time services are provided to adult workers; and

(2) An operational period during which these services are provided.

(d) An award to a partnership under this program may be used to pay—

(1) 70 percent of the costs of a project during the operational period referenced in paragraph (c)(2) of this section;

(2) 100 percent of the administrative costs incurred by an SEA or an LEA in establishing projects during the start-up period referenced in paragraph (c)(1) of this section; and

(3) 70 percent of the administrative costs incurred by other entities in establishing projects during the start-up period referenced in paragraph (c)(1) of this section.

(e)(1) A project's start-up period may not last longer than 90 days; and

(2) Partnerships shall minimize the start-up period, if any, proposed for their projects.

(Authority: 20 U.S.C. 1211(b)(1), (2))

§ 433.51 What are the program review and evaluation requirements?

The SEA shall provide for program reviews and evaluations in accordance with 34 CFR 426.46.

(Approved under OMB Control No. 1830-0510)

(Authority: 20 U.S.C. 1207a and 1211(b))

§ 433.52 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

(a) An SEA shall ensure that projects serving adults with limited English proficiency or no English proficiency provide for the needs of these adults by teaching literacy skills needed in the workplace.

(b) Projects may teach workplace literacy skills—

(1) To the extent necessary, in the native language of these adults; or

(2) Exclusively in English.

(c) Projects must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1206a(d) and 1211(b))

PART 434—STATE-ADMINISTERED ENGLISH LITERACY PROGRAM

Subpart A—General

Sec.
434.1 What is the State-administered English Literacy Program?
434.2 Who is eligible for an award?
434.3 What activities may the Secretary fund?
434.4 What regulations apply?
434.5 What definitions apply?

Subpart B—How Does A State Apply for an Award?

434.10 What State plan requirements must be met?

Subpart C—How Does the Secretary Make an Award?

434.20 How does the Secretary determine the amount of an award?

Subpart D—What Conditions Must be Met After a State Receives an Award?

434.30 Who is eligible to apply to a State for a subgrant or contract?
434.31 What percentage requirements must a State meet in using and allocating funds to eligible recipients?
434.32 How are awards made to eligible recipients?
434.33 In what additional way may a State use funds under this program?

Sec.
434.34 What are the reporting and program review and evaluation requirements under this program?
434.35 What other condition applies to this program?

Subpart E—What Compliance Procedures May the Secretary Use?

434.40 When may the Secretary terminate a grant?

AUTHORITY: 20 U.S.C. 1211a, unless otherwise noted.

SOURCE: 54 FR 34422, Aug. 18, 1989, unless otherwise noted.

Subpart A—General

§ 434.1 What is the State-administered English Literacy Program?

The State-administered English Literacy Program provides grants to States for English literacy programs for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1211a(a)(1))

§ 434.2 Who is eligible for an award?

A State educational agency (SEA) is eligible for an award if the Secretary has approved the State plan and application submitted in accordance with section 342 of the Act and 34 CFR 426.10 through 426.13, and the State plan meets the requirements in § 343.10.

(Authority: 20 U.S.C. 1211a(a)(1), (2))

§ 434.3 What activities may the Secretary fund?

(a) The Secretary provides funds for establishing, operating, and improving English literacy programs of instruction that are designed to help limited English proficient adults, out-of-school youths, or both, achieve full competence in the English language.

(b) Funds may also be used to provide support services for program participants, including child care and transportation.

(Authority: 20 U.S.C. 1201a(13) and 1211a(a)(1))

§ 434.4 What regulations apply?

The following regulations apply to the State-administered English Literacy Program:

(a) The regulations in this part 434.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1211a)

§ 434.5 What definitions apply?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1211a)

Subpart B—How Does A State Apply for an Award?

§ 434.10 What State plan requirements must be met?

(a) To receive a grant under this program, an SEA shall include in its State plan, submitted to the Secretary in accordance with 34 CFR 426.10, a description of—

(1) The number of individuals of limited English proficiency in the State who need or could benefit from programs assisted under section 372(a) of the Act and this part;

(2) The activities to be undertaken with the grant under this part and the manner in which these activities will promote English literacy and enable individuals of limited English proficiency in the State to participate fully in national life;

(3) How the activities described in paragraph (a)(2) of this section will serve individuals of limited English proficiency, including the qualifications and training of personnel who will participate in the proposed activities;

(4) The resources necessary to develop and operate the proposed activities and the resources to be provided by the State; and

(5) The specific goals of the proposed activities and how achievement of these goals will be measured.

(b) An SEA that is prohibited by State law from awarding Federal funds by subgrant or contract to public or private agencies, organizations, or institutions, other than local educational agencies, shall describe in its State plan—

(1) The legal basis of this prohibition; and

(2) How community-based organizations (CBOs) with demonstrated capability to administer English proficiency programs will otherwise be fully involved in establishing and operating English literacy programs for individuals of limited English proficiency.

(Approved under OMB Control No. 1830-0026)

(Authority: 20 U.S.C. 1211a(a)(2))

Subpart C—How Does the Secretary Make an Award?

§ 434.20 How does the Secretary determine the amount of an award?

(a)(1) From the sums available for the purpose of grants to States under section 372 of the Act, the Secretary allots to—

(i) Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands $10,000 each;

(ii) The Trust Territory of the Pacific Islands (Republic of Palau) an amount that bears the same ratio to $10,000 that the population of Palau ages 18 and over bears to the total population of the Trust Territory of the Pacific Islands as formally constructed (including the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands) ages 18 and over; and

(iii) Puerto Rico, $25,000.

(2) From the remainder of those sums the Secretary allots to each of the 50 States and the District of Columbia an amount that bears the same ratio to that remainder as the number of persons 18 years of age and older who are limited English proficient of such State bears to the number of those persons in all States, except that no State shall receive less than $25,000. For purposes of paragraph (a)(2) of this section the term "State" does not include Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands (Republic of Palau).

(b) The Secretary relies on Census data on the number of individuals that speak English less than very well to make the determinations in paragraph (a) of this section.

(Authority: 20 U.S.C. 1211a(a))

Subpart D—What Conditions Must be Met After a State Receives an Award?

§ 434.30 Who is eligible to apply to a State for a subgrant or contract?

The following entities are eligible to apply to the SEA for an award:

(a) A local educational agency (LEA).

(b) A CBO with demonstrated capability to administer English proficiency programs.

(c)(1) A public or private nonprofit agency, organization, or institution.

(2) The nonprofit agency, organization, or institution shall consult the LEA in the area proposed to be served by the applicant and give that LEA an opportunity to comment on the application.

(3) The nonprofit agency, organization, or institution shall respond to the LEA's comments and attach the comments and responses to the application.

(d)(1) An LEA, CBO, or public or private nonprofit agency, organization or institution may apply an behalf of a consortium that includes a for-profit agency, organization, or institution that can make a significant contribution to attaining the objectives of the Act.

(2) The LEA, CBO, or public or private nonprofit agency, organization, or institution shall enter into a contract with the for-profit agency, organization, or institution for the establishment or expansion of programs.

(Authority: 20 U.S.C. 1203a(a) and 1211a(b))

§ 434.31 What percentage requirements must a State meet in using and allocating funds to eligible recipients?

(a) An SEA may use not more than 5 percent of its grant for State administration, technical assistance, and training.

(b) After determining the amount to be used for State administration, technical assistance, and training under paragraph (a) of this section, the SEA shall allocate at least 50 percent of the remainder of its grant to programs operated by CBOs with demonstrated capability to administer English proficiency programs.

(Authority: 20 U.S.C. 1211a(b), (f)(5))

§ 434.32 How are awards made to eligible recipients?

(a) Except as provided in paragraph (c) of this section, an SEA shall make awards to eligible recipients using the provisions in 34 CFR 426.31.

(b) In applying the preference provisions in 34 CFR 426.31(a), the SEA shall ensure that it allocates at least 50 percent of the remainder of its grant to programs operated by CBOs, as described in § 434.31(b).

(c) An SEA may not use the consultation and comment provisions in 34 CFR 426.31(e) in making awards to CBOs.

(d) An SEA shall develop appropriate criteria for the review of an application submitted by a CBO to ensure that the applicant has demonstrated capability to administer an English proficiency program.

(Authority: 20 U.S.C. 1203a(a), 1206(c)(3), and 1211a(b))

§ 434.33 In what additional way may a State use funds under this program?

An award to an SEA under this program may be used in combination with other Federal funds awarded to a State for literacy training for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1211a(f)(3))

§ 434.34 What are the reporting and program review and evaluation requirements under this program?

An SEA that receives a grant under section 372 of the Act and this part shall—

(a)(1) Report information describing the activities funded under the SEA's grant for each fiscal year covered by the grant.

(2) Provide for program reviews and evaluations in accordance with 34 CFR 426.46.

(b) Notify the Secretary if there is no longer a need in the State for the activities funded under the SEA's grant.

(Approved under OMB Control 1830-0510)

(Authority: 20 U.S.C. 1207a and 1211a(a))

§ 434.35 What other condition applies to this program?

(a) An SEA shall provide for the needs of individuals of limited English proficiency or no English proficiency by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(b) The programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(c) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C.1206a(d) and 1211(a)

Subpart E—What Compliance Procedures May the Secretary Use?

§ 434.40 When may the Secretary terminate a grant?

(a) The Secretary terminates a grant only if the Secretary determines that—

(1) The State has not made substantial progress in achieving the educational goals described in the State plan; or

(2) There is no longer a need in the State for the activities funded under this part.

(b) Prior to making a determination under paragraph (a) of this section, the Secretary provides the State an opportunity to change the administration of its grant in order to—

(1) Achieve substantial progress in meeting those educational goals; or

(2) Meet new needs through different activities.

(Authority: 20 U.S.C. 1211a(a)(3))

PART 435—NATIONAL ENGLISH LITERACY DEMONSTRATION PROGRAM FOR INDIVIDUALS OF LIMITED ENGLISH PROFICIENCY

Subpart A—General

Sec.
435.1 What is the National English Literacy Demonstration Program for Individuals of Limited English Proficiency?
435.2 Who is eligible for an award?
435.3 What activities may the Secretary fund?
435.4 What regulations apply?
435.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

435.20 How does the Secretary evaluate an application?
435.21 What selection criteria does the Secretary use?
435.22 What additional factor does the Secretary consider?

Subpart D—What Conditions Must be Met After an Award?

435.30 How many States use funds under this program?
435.31 How must projects that serve individuals of limited English proficiency provide for the needs of those adults?

AUTHORITY: 20 U.S.C. 1211a(d), unless otherwise noted.

SOURCE: 54 FR 34424, Aug. 18, 1989, unless otherwise noted.

Subpart A—General

§ 435.1 What is the National English Literacy Demonstration Program for Individuals of Limited English Proficiency?

The National English Literacy Demonstration Program for individuals of limited English proficiency provides financial assistance for the development of innovative approaches and methods used in English literacy programs for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1211a(d))

§ 435.2 Who is eligible for an award?

Public or private nonprofit agencies, institutions, or organizations are eligible for a grant, cooperative agreement, or contract under this program.

(Authority: 20 U.S.C. 1211a(d))

§ 435.3 What activities may the Secretary fund?

(a) The Secretary may support, directly or through awards, the development of innovative approaches and methods of English literacy education for individuals of limited English proficiency that use new instructional methods and technologies.

(b) These innovative approaches and methods must be designed to help limited English proficient adults, out-of-school youths, or both, to achieve full competence in the English language.

(Authority: 20 U.S.C. 1201a(13) and 1211a(d)(1))

§ 435.4 What regulations apply?

The following regulations apply to the National English Literacy Demonstration Program for Individuals of Limited English Proficiency:

(a) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR chapter 34 (applicable to contracts).

(b) The regulations in this part 435.

(c) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1221a)

§ 435.5 What definitions apply?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1221a)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 435.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 435.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 435.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved points among the criteria in § 435.21.

(Authority: 20 U.S.C. 1221a(d))

§ 435.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The need for the innovative approaches and methods of English literacy education for individuals of limited English proficiency that the project proposes to develop;

(2) How the needs were identified; and

(3) How the project will meet the needs.

(b) *Project objectives.* (10 points) the Secretary reviews each application to determine the extent to which the project objectives—

(1) Relate to the innovative approaches and methods of English literacy education for individuals of limited English proficiency proposed for use in the project;

(2) Are clearly stated;

(3) Are measurable; and

(4) Describe appropriate outcomes.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project including—

(1) The quality of the project design and how it incorporates the use of new instructional methods and technologies;

(2) The extent to which the management plan is well-designed and ensures proper and efficient administration of the project;

(3) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(4) How the applicant will select project participants and ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Evaluation.* (15 points) the Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Contribute to the possible replication of the project; and

(4) To the extent possible, include a third party evaluation.

(e) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project, particularly as their experience and expertise relate to English literacy and training in English-as-a-second-language for adults;

(ii) The appropriateness of the time that each person referred to in paragraph (e)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (e)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Institutional commitment.* (5 points) The Secretary reviews each application to determine the extent to which the applicant's agency, institution, or organization—

(1) Has experience in providing English literacy services for individuals of limited English proficiency;

(2) Will provide appropriate resources; and

(3) Will provide adequate facilities, equipment, and supplies.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: 20 U.S.C. 1211a(d))

[54 FR 34424, Aug. 18, 1989; 54 FR 46065, Nov. 1, 1989]

§ 435.22 What additional factor does the Secretary consider?

In addition to the criteria in § 435.21, the Secretary may consider whether funding a particular application would contribute to the funding of a variety of approaches and methods.

(Authority: 20 U.S.C. 1221a(d))

Subpart D—What Conditions Must be Met After an Award?

§ 435.30 How may States use funds under this program?

An award to a State educational agency under this program may be used in combination with other Federal funds awarded to a State for literacy training for individuals of limited English proficiency.

(Authority: 20 U.S.C. 1221a(d))

§ 435.31 How must projects that serve individuals of limited English proficiency provide for the needs of those adults?

(a) Projects that serve individuals of limited English proficiency or no English proficiency shall provide for the needs of these adults by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(b) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(c) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1206a(d) and 1211a)

PART 436—ADULT MIGRANT FARMWORKER AND IMMIGRANT EDUCATION PROGRAM

Subpart A—General

Sec.
436.1 What is the Adult Migrant Farmworker and Immigrant Education Program?
436.2 What activities may the Secretary fund?
436.3 Who is eligible for an award?
436.4 What regulations apply?
436.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

436.20 What priorities may the Secretary establish?
436.21 How does the Secretary evaluate an application?
436.22 What selection criteria does the Secretary use?
436.23 What additional factor does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

436.30 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

AUTHORITY: 20 U.S.C. 1213, unless otherwise noted.

SOURCE: 54 FR 34426, Aug. 18, 1989, unless otherwise noted.

Subpart A—General

§ 436.1 What is the Adult Migrant Farmworker and Immigrant Education Program?

The Adult Migrant Farmworker and Immigrant Education Program provides financial assistance for adult education programs, services, and activities to meet the special needs of adult migrant farmworkers and immigrants.

(Authority: 20 U.S.C. 1213(a))

§ 436.2 What activities may the Secretary fund?

The Secretary provides awards for planning, developing, and evaluating projects that are designed to provide adult education programs, services, and activities to meet the special needs of adult migrant farmworkers and immigrants.

(Authority: 20 U.S.C. 1213(a))

§ 436.3 Who is eligible for an award?

(a) The following entities are eligible for a direct grant under the Adult Migrant Farmworker and Immigrant Education Program:

(1) A State educational agency (SEA).

(2) A local educational agency (LEA).

(3)(i) A public or private nonprofit agency, organization, or institution.

(ii) The nonprofit agency, organization, or institution shall consult the LEA in the area proposed to be served by the applicant and give that LEA an opportunity to comment on the application.

(iii) The nonprofit agency, organization, or institution shall respond to the LEA's comments and attach the comments and responses to the application.

(4)(i) An LEA or public or private nonprofit agency, organization or institution may apply on behalf of a consortium that includes a for-profit agency, organization, or institution that can make a significant contribution to attaining the objective of the Act.

(ii) The LEA or public or private nonprofit agency, organization, or instituion shall enter into a contract with the for-profit agency, organization, or institution for the establishment or expansion of programs.

(b)(1) To be eligible for a grant, the applicant must propose a project of the type described in the State's plan as appropriate for meeting the educational needs of adult migrant farmworkers and immigrants.

Cross-Reference: See 34 CFR 426.12(e).

(2)(i) An applicant other than an SEA shall obtain from the SEA a certification that the proposed project meets the requirements of paragraph (b)(1) of this section and forward that certification to the Secretary with the application.

(ii) An SEA that declines to issue a certification for a proposed project shall provide the applicant and the Secretary a written statement of its reasons for withholding certification.

(Authority: 20 U.S.C. 1203a(a) (1), (2), and 1213(a))

§ 436.4 What regulations apply?

The following regulations apply to the Adult Migrant Farmworker and Immigrant Education Program:

(a) The regulations in this part 436.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1213(a))

§ 436.5 What definitions apply?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1213(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 436.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the Federal Register the priorities for this program, if any, from the types of projects described in paragraph (b) of this section.

(b) Priority may be given to projects that meet the special needs of—

(1) Adult migrant farmworkers; or

(2) Adult migrants.

(Authority: 20 U.S.C. 1213(a))

§ 436.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 436.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 436.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved points among the criteria in § 436.22.

(Authority: 20 U.S.C. 1213(a))

§ 436.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need.* (15 points) (1) The Secretary reviews each application to determine how it addresses the literacy training needs of adult migrant farmworkers, adult immigrants, or both.

(2) The Secretary looks for information that describes—

(i) The literacy training needs of adults to be served by the project; and

(ii) The number and characteristics of the adults to be served by the project.

(b) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program;

(4) How the applicant plans to use its resources and personnel to achieve each objective; and

(5) A clear description of how the applicant will select participants and ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Program factors.* (15 points) The Secretary reviews each application to determine the extent to which there is—

(1) A clear description of the services to be offered;

(2) Evidence of past successful performance using the model being proposed, if appropriate;

(3) A complete description of the methodology to be used including some or all of the following components:

(i) A thorough assessment of the needs of individual students.

(ii) Recruitment strategies that are culturally appropriate.

(iii) Flexibility in the manner that services are offered, e.g., the provision of an accessible training site and schedule and the use of aides.

(iv) Individualized treatment.

(v) Counseling; and

(4) Any ongoing and planned activities in the community that will serve the same population as the project; and the extent to which coordination with those activities is planned so that a comprehensive package of services is provided for the project participants and the project does not duplicate existing activities.

(d) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each one of the key personnel, including the project director, will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate for the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured; and

(4) To the extent possible, include a third party evaluation.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: 20 U.S.C. 1213(a))

[54 FR 34426, Aug. 18, 1989; 54 FR 46065, Nov. 1, 1989]

§ 436.23 What additional factor does the Secretary consider?

In addition to the criteria in § 436.22, the Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 1213(a))

Subpart D—What Conditions Must be Met After an Award?

§ 436.30 How must projects that serve adults with limited English proficiency provide for the needs of those adults?

(a) Projects that serve adults with limited English proficiency or no English proficiency shall provide for the needs for these adults by providing programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(b) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(c) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational Education Act.

(Authority: 20 U.S.C. 1206(d) and 1213(a))

PART 437—NATIONAL ADULT LITERACY VOLUNTEER TRAINING PROGRAM

Subpart A—General.

Sec.

437.1 What is the National Adult Literacy Volunteer Training Program?
437.2 Who is eligible for an award?
437.3 What activities may the Secretary fund?
437.4 What regulations apply?
437.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

437.20 How does the Secretary evaluate an application?
437.21 What selection criteria does the Secretary use?
437.22 What additional factors does the Secretary consider?

AUTHORITY: 20 U.S.C. 1213a, unless otherwise noted.

SOURCE: 54 FR 34427, Aug. 18, 1989, unless otherwise noted.

Subpart A—General

§ 437.1 What is the National Adult Literacy Volunteer Training Program?

The National Adult Literacy Volunteer Training Program provides financial assistance for projects that train adult volunteers, especially the elderly, who wish to participate as tutors in local adult education programs under the Act.

(Authority: 20 U.S.C. 1213a(a))

§ 437.2 Who is eligible for an award?

The following entities are eligible for a direct grant or cooperative agreement under the Adult Literacy Volunteer Training Program:

(a) State educational agencies.

(b) Local educational agencies.

(c) Public or private nonprofit agencies, organizations, or institutions.

(Authority: 20 U.S.C. 1213a(a))

§ 437.3 What activities may the Secretary fund?

The Secretary supports planning, implementation, and evaluation of projects designed to train adult volunteers, especially the elderly, who wish to participate as tutors in local adult education programs under the Act.

(Authority: 20 U.S.C. 1213a(a))

§ 437.4 What regulations apply?

The following regulations apply to the National Adult Literacy Volunteer Training Program:

(a) The regulations in this part 437.

(b) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1213a)

§ 437.5 What definitions apply?

(a) The definitions in 34 CFR 425.4 apply to this part.

(b) The following definition also applies to this part:

Elderly means an individual 60 years of age or older.

(Authority: 20 U.S.C. 1213a(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 437.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 437.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 437.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved points among the criteria in § 437.21.

(Authority: 20 U.S.C. 1213a(a))

§ 437.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (10 points) The Secretary reviews each application to determine the extent to which the project meets volunteer training needs, including consideration of—

(1) The extent to which the project will train adult volunteers, especially the elderly, who can be placed in an adult education program immediately upon completion of the training program;

(2) The extent to which the project has identified specific training needs for volunteers in the geographical area to be served for which resources are not available; and

(3) How these training needs were identified.

(b) *Project objectives.* (10 points) The Secretary reviews each application to determine the extent to which the project objectives—

(1) Are clearly stated;

(2) Are measurable; and

(3) Will result in appropriate project outcomes.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project including—

(1) The quality of the training design;

(2) The extent to which the participant recruitment and selection plan is effective and is designed to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(3) The extent to which the plan of operation provides for the effective management and efficient administration of the project; and

(4) The extent to which the training program relates appropriately to any training programs in the community.

(d) *Evaluation.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation –

(1) Are clearly explained and are appropriate to the project;

(2) Include a description of the outcomes expected for participants;

(3) Include a description of how these outcomes will be measured; and

(4) Include a plan, as a part of the project, to follow up the trainees' placement as tutors in adult education programs.

(e) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualification of the project director;

(ii) The qualifications of trainers and other key personnel;

(iii) The appropriateness of, and time allotted to, each of the assigned tasks; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualification under paragraphs (e)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Institutional commitment.* (10 points) The Secretary reviews each application to determine the extent to which the applicant's agency, organization, or institution—

(1) Has experience in providing literacy services to adults;

(2) Will provide adequate training facilities; and

(3) Will provide other appropriate resources.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: 20 U.S.C. 1213a(a))

[54 FR 34427, Aug. 18, 1989; 54 FR 46065, Nov. 1, 1989]

§ 437.22 What additional factors does the Secretary consider?

In addition to the criteria in § 437.21, the Secretary may consider the following factors in making an award:

(a) *Geographic distribution.* The Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(b) *Variety of approaches.* The Secretary may consider whether funding a particular applicant would contribute to the funding of a variety of approaches.

(Authority: 20 U.S.C. 1213a(a))

PART 438—STATE PROGRAM ANALYSIS ASSISTANCE AND POLICY STUDIES PROGRAM

Subpart A—General

Sec.

438.1 What is the State Program Analsyis Assistance and Policy Studies Program?
438.2 Who is eligible for an award?
438.3 What activities may the Secretary fund?
438.4 What regulations apply?
438.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

438.20 How does the Secretary evaluate an application?
438.21 What selection criteria does the Secretary use?
438.22 What additional factors does the Secretary consider?

AUTHORITY: 20 U.S.C. 1213b(a), unless otherwise noted.

SOURCE: 54 FR 34428, Aug. 18, 1989, unless otherwise noted.

Subpart A—General

§ 438.1 What is the State Program Analysis Assistance and Policy Studies Program?

The State Program Analysis Assistance and Policy Studies Program assists States in evaluating the status and progress of adult education in achieving the purposes of the Act.

(Authority: 20 U.S.C. 1213b(a))

§ 438.2 Who is eligible for an award?

(a) Public or private nonprofit agencies, organizations, or institutions are eligible for a grant or cooperative agreement under this program.

(b) Business concerns or public or private nonprofit agencies, organizations, or institutions are eligible for a contract under this program.

(Authority: 20 U.S.C. 1213b(a))

§ 438.3 What activities may the Secretary fund?

The Secretary may support the following directly or through awards:

(a) An analysis of State plans and of the findings of evaluations conducted in accordance with section 352 of the Act, with suggestions to State educational agencies for improvements in planning or program operation.

(b) The provision of an information network (in conjunction with the National Diffusion Network) on the results of research in adult education, the operation of model or innovative programs (including efforts to continue activities and services under the program after Federal funding has been discontinued), successful experiences in the planning, administration, and conduct of adult education programs, advances in curriculum and instructional practices, and other information useful in the improvement of adult education.

(c) Any other activities, including national policy studies, which the Secretary may designate, that assist States in evaluating the status and progress of adult education in achieving the purposes of the Act.

(Authority: 20 U.S.C. 1213b(a))

§ 438.4 What regulations apply?

The following regulations apply to the State Program Analysis Assistance and Policy Studies Program:

(a) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR Chapter 34 (applicable to contracts).

(b) The regulations in this part 438.

(c) The regulations in 34 CFR part 425.

(Authority: 20 U.S.C. 1213b(a))

§ 438.5 What definitions apply?

The definitions in 34 CFR 425.4 apply to this part.

(Authority: 20 U.S.C. 1213b(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 438.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 438.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 438.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved points among the criteria in § 438.21.

(Authority: 20 U.S.C. 1213b(a))

§ 438.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to determine how well the objectives of the proposed project will assist States in evaluating the status and progress of their adult education programs.

(b) *Extent of need for the project.* (10 points) The Secretary reviews each application to determine the extent to which the proposed project meets specific needs, including consideration of—

(1) The needs addressed by the project;

(2) How the applicant identified those needs;

(3) How those needs relate to project objectives; and

(4) The benefits to be gained by meeting those needs.

(c) *Plan of operation.* (20 points) The Secretary reviews each aplication to determine the quality of the plan of operation for the proposed project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective.

(d) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications and experience of the project director, if one is to be used;

(ii) The qualifications and experience of each of the other key personnel to be used on the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the proposed project activities; and

(2) Costs are necessary and reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(2) A description of the types of materials the applicant plans to make available and the methods for making the materials avialable; and

(3) Provisions for publicizing the findings of the project at the local, State, and national levels, as appropriate.

(Approved by the Office of Management and Budget under control number 1830-0013)

(Authority: 20 U.S.C. 1213b(a))

[54 FR 34428, Aug. 18, 1989; 54 FR 46065, Nov. 1, 1989]

§ 438.22 What additional factors does the Secretary consider?

In addition to the criteria in § 438.21, the Secretary may consider the following factors in making an award:

(a) *Geographic distribution.* The Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(b) *Variety of approaches.* The Secretary may consider whether funding a particular applicant would contribute to the funding of a variety of approaches to assisting States in evaluating the status and progress of their adult education programs.

(Authority: 20 U.S.C. 1213b(a)).

PART 441—ADULT EDUCATION FOR THE HOMELESS PROGRAM

Subpart A—General

Sec.
441.1 What is the Adult Education for the Homeless Program?
441.2 Who may apply for an award?
441.3 What activities may the Secretary fund?
441.4 What regulations apply?
441.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

441.20 How does the Secretary evaluate an application?
441.21 What selection criteria does the Secretary use?
441.22 What additional factor does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

441.30 How may an SEA operate the program?

AUTHORITY: 42 U.S.C. 11421, unless otherwise noted.

SOURCE: 54 FR 34430, Aug. 18, 1989, unless otherwise noted.

Subpart A—General

§ 441.1 What is the Adult Education for the Homeless Program?

The Adult Education for the Homeless Program provides financial assistance to State educational agencies (SEAs) to enable them to implement, either directly or through contracts or subgrants, a program of literacy training and basic skills remediation for adult homeless individuals within their State.

(Authority: 42 U.S.C. 11421(a))

§ 441.2 Who may apply for an award?

State educational agencies in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands may apply for an award under this program.

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ıthority: 42 U.S.C. 11421(d))

41.3 What activities may the Secretary
fund?

The Secretary provides grants or co-
erative agreements for projects that
plement a program of literacy train-
and basic skills remediation for
ult homeless individuals. Projects
ıst—

a) Include a program of outreach
ivities; and

b) Coordinate with existing re-
ırces such as community-based or-
nizations, VISTA recipients, the
ult basic education program and its
ipients, and nonprofit literacy-
ion organizations.

ıthority: 42 U.S.C. 11421(a))

41.4 What regulations apply?

The following regulations apply to
Adult Education for the Homeless
ogram:

a) The Education Department Gen-
l Administrative Regulations
DGAR) as follows:

1) 34 CFR part 74 (Administration
Grants to Institutions of Higher
ucation, Hospitals, Nonprofit Orga-
ations) for grants, including cooper-
ve agreements, to institutions of
her education, hospitals, and non
fit organizations.

2) 34 CFR part 75 (Direct Grant
grams).

3) 34 CFR part 77 (Definitions that
ply to Department Regulations).

4) 34 CFR part 79 (Intergovernmen-
Review of Department of Educa-
Programs and Activities).

5) 34 CFR part 80 (Uniform Admin-
ative Requirements for Grants and
operative Agreements to State and
al Governments) for grants, includ-
cooperative agreements, to State
local governments, including
ian tribal governments.

) 34 CFR part 81 (General Educa-
Provisions Act—Enforcement).

) 34 CFR part 85 (Government-
Debarment and Suspension (Non-
curement) and Governmentwide
uirements for Drug-Free Work-
e (Grants)).

) The regulations in this part 441.

hority: 42 U.S.C. 11421)

§ 441.5 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in sections 103 and 702(d), respectively, of the Steward B. McKinney Homeless Assistance Act (Pub. L. 100-77, 42 U.S.C. 11301 *et seq.*):

Homeless or homeless individual.
State.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract
EDGAR
Grant
Grantee
Local educational agency
Nonprofit
Private
Project
Public
Secretary
State educational agency

(c) *Other definitions.* The following definitions also apply to this part:

Act means the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, 42 U.S.C. 11301 *et seq.*).

Adult means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under the applicable State law.

Basic skills remediation and *literacy training* mean adult education for homeless adults whose inability to speak, read, or write the English language constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, that is designed to help eliminate this inability and raise the level of education of those individuals with a view to making them less likely to become dependent on others, to improving their ability to benefit from occupational training and otherwise increasing their opportunities for more productive and profitable employment, and to making them better able to meet their adult responsibilities.

Eligible recipients means public or private agencies, institutions, or organizations, including religious or charitable organizations, eligible to apply for a contract from a State educational agency to operate projects, services, or activities.

Outreach means activities designed to—

(1) Identify and inform adult homeless individuals of the availability and benefits of the Adult Education for the Homeless Program; and

(2) Assist those homeless adults, by providing active recruitment and reasonable and convenient access, to participate in the program.

(Authority: 42 U.S.C. 11421)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 441.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 441.21.

(b) The Secretary awards up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 441.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the FEDERAL REGISTER, the Secretary may assign the reserved points among the criteria in § 441.21.

(Authority: 42 U.S.C. 11421)

§ 441.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (25 points) The Secretary reviews each application to determine the extent to which—

(1) The program design is tailored to the literacy and basic skills needs of the specific homeless population being served (for example, designs to address the particular needs of single parent heads of households, substance abusers, or the chronically mentally ill);

(2) Cooperative relationships with other service agencies will provide an integrated package of support services to address the most pressing needs of the target group at, or through, the project site. Support services must be designed to bring members of the target group to a state of readiness for instructional services or to enhance the effectiveness of instructional services. Examples of appropriate support services to be provided and funded through cooperative relationships include, but are not limited to—

(i) Assistance with food and shelter;

(ii) Alcohol and drug abuse counseling;

(iii) Individual and group mental health counseling;

(iv) Health care;

(v) Child care;

(vi) Case management;

(vii) Job skills training;

(viii) Employment training and work experience programs; and

(ix) Job placement;

(3) The SEA's application provides for individualized instruction, especially the use of individualized instructional plans or individual education plans that are developed jointly by the student and the teacher and reflect student goals;

(4) The program's activities include outreach services, especially interpersonal contacts at locations where homeless persons are known to gather, and outreach efforts through cooperative relations with local agencies that provide services to the homeless; and

(5) Instructional services will be readily accessible to students, especially the provision of instructional services at a shelter or transitional housing site.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs in section 702 of the Act, including consideration of—

(1) (i) An estimate of the number of homeless persons expected to be served and the number of homeless adults to be served within each participating school district of the State.

(ii) For the purposes of the count in paragraph (b)(1)(i) of this section, an eligible homeless adult is an individual who has attained 16 years of age or who is beyond the age of compulsory attendance under the applicable State law; who does not have a high school diploma, a GED, or the basic education skills to obtain full-time meaningful employment; and who meets the definition of "homeless or homeless individual" in section 103 of the Act;

(2) How the numbers in paragraph (b)(1) of this section were determined.

(3) The extent to which the target population of homeless to be served in the project needs and can benefit from literacy training and basic skills remediation;

(4) The need of that population for educational services, including their readiness for instructional services and how readiness was assessed; and

(5) How the project would meet the literacy and basic skills needs of the specific target group to be served.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The establishment of written, measurable goals and objectives for the project that are based on the project's overall mission;

(2) The extent to which the program is coordinated with existing resources such as community-based organizations, VISTA recipients, adult basic education program recipients, nonprofit literacy action organizations, and existing organizations providing shelters to the homeless;

(3) The extent to which the management plan is effective and ensures proper and efficient administration of the project;

(4) How the applicant will ensure that project participants otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(5) If applicable, the plan for the local application process and the criteria for evaluating local applications submitted by eligible applicants for contracts or subgrants.

(d) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the State plans to use on the project, including—

(i) The qualifications of the State coordinator/project director;

(ii) The qualifications of each of the other key personnel to be used by the SEA in the project;

(iii) The time that each person referred to in paragraphs (d) (1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d) (1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience in providing services to homeless populations;

(iii) Experience and training in project management; and

(iv) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The budget is presented in enough detail for determining paragraphs (e) (1) and (2) of this section.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Objectively, and to the extent possible, quantifiably measure the success, both of the program and of the participants, in achieving established goals and objectives;

(2) Contain provisions that allow for frequent feedback from evaluation data provided by participants, teachers, and community groups in order to improve the effectiveness of the program; and

(3) Include a description of the types of instructional materials the appli-

cant plans to make available and the methods for making the materials available.

(Approved under OMB Control No. 1830-0506)

(Authority: 42 U.S.C. 11421)

§ 441.22 What additional factor does the Secretary consider?

In addition to the criteria in § 441.21, the Secretary may consider whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(Authority: 42 U.S.C. 11421)

Subpart D—What Conditions Must be Met After an Award?

§ 441.30 How may an SEA operate the program?

An SEA may operate the program directly, award subgrants, or award contracts to eligible recipients. If an SEA awards contracts, the SEA shall distribute funds on the basis of the State-approved contracting process.

(Authority: 42 U.S.C. 11421(a)).

CHAPTER V—OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS, DEPARTMENT OF EDUCATION

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PART 500—BILINGUAL EDUCATION: GENERAL PROVISIONS

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AUTHORITY: 20 U.S.C. 3281-3341, unless otherwise noted.

SOURCE: 51 FR 22423, June 19, 1986, unless otherwise noted.

Subpart A—General

§ 500.1 What programs are governed by these regulations?

The regulations in this part apply to programs authorized under the Act. The programs governed by this part and their applicable program regulations are as follows:

(a) Basic Programs (34 CFR Part 501).

(Authority: 20 U.S.C. 3291(a) (1), (2), and (3))

(b) Programs of Academic Excellence (34 CFR Part 524).

(Authority: 20 U.S.C. 3291(a)(4))

(c) Family English Literacy Program (34 CFR Part 525).

(Authority: 20 U.S.C. 3291(a)(5))

(d) Special Populations Program (34 CFR Part 526).

(Authority: 20 U.S.C. 3291(a)(6))

(e) State Educational Agency Program (34 CFR Part 548).

(Authority: 20 U.S.C. 3302)

(f) Educational Personnel Training Program (34 CFR Part 561).

(Authority: 20 U.S.C. 3221)

(g) Fellowship Program (34 CFR Part 562).

(Authority: 20 U.S.C. 3321(a)(2), 3323)

(h) Training Development and Improvement Program (34 CFR Part 573).

(Authority: 20 U.S.C. 3321(a)(3))

(i) Short-Term Training Program (34 CFR Part 574).

(Authority: 20 U.S.C. 3321(a)(4))

[51 FR 44243, June 19, 1986, as amended at 53 FR 39218]

§ 500.2 [Reserved]

§ 500.3 What regulations apply to these programs?

(a) Except as described in paragraphs (b), (c) and (d) of this section, the following regulations apply to programs authorized under the Act listed in § 500.1:

(1) The regulations in this Part 500.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR—

(i) Part 74 (Administration of Grants of Institutions of Higher Education, Hospitals and Nonprofit Organizations);

(ii) Part 75 (Direct Grant Programs);

(iii) Part 77 (Definitions That Apply to Department Regulations);

(iv) Part 78 (Education Appeal Board);

(v) Part 79 (Intergovernmental Review of Department of Education Programs and Activities); and

(vi) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(b) The provisions in 34 CFR 75.217 (b) through (d) (relating to the review of applications) do not apply to the State Educational Agency Program in 34 CFR Part 548.

(c) Except for the provisions in 34 CFR 75.51 (relating to proof of nonprofit status) the EDGAR provisions listed in paragraph (a)(2) of this section do not apply to the Fellowship Program in Part 562.

(d) The provisions in 34 CFR 75.217(b)(2) (relating to the review of applications) do not apply to 34 CFR Parts 501, 524, 525, 526, 561, 573, and 574.

(Authority: 20 U.S.C. 3281-3341)

[51 FR 22423, June 19, 1986, as amended at 53 FR 39218, Oct. 5, 1988]

§ 500.4 What definitions apply to these programs?

(a) *Definitions in EDGAR.* The following terms used in the parts listed in § 500.1 (except Part 562) are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Elementary school
Fiscal year
Grant period

Local educational agency; for the purpose of carrying out programs under the Act for individuals served by elementary, secondary, or postsecondary schools operated predominantly for Indian or Alaska Native children, the term also means an Indian tribe or tribally sanctioned educational authority.

Nonprofit
Nonpublic
Preschool
Private
Project
Public
Recipient
Secondary school
Secretary
State
State educational agency

(b) *Definitions in the Act.* The following terms used in the parts listed in § 500.1 are defined in section 7003 of the Act:

Director
Family English literacy program
Limited English proficiency and proficient
Low-income
Native language
Office
Other programs for persons of limited English proficiency
Programs of academic excellence
Program of developmental bilingual education
Program of transitional bilingual education
Secretary
Special alternative instructional programs

(Authority: 20 U.S.C. 3283)

(c) *Program definitions.* The following definitions also apply to the parts listed in § 500.1:

Act or *Title VII* means the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 100-297.

(Authority: 20 U.S.C. 3281-3341)

Educational personnel means teachers, teacher aides, paraprofessionals, administrators, school psychologists, guidance counselors, and other persons who provide or are preparing to provide instructional or support services in programs for limited English proficient persons.

(Authority: 20 U.S.C. 3281-3341)

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) that is recognized for the special programs and services provided by the United States to Indians because of their status as Indians.

(Authority: 20 U.S.C. 3292)

Tribally sanctioned educational authority means any department or division of education operating within the administrative structure of the duly constituted governing body of an Indian tribe, as well as any nonprofit institution or organization that—

(1) Is chartered by the governing body of an Indian tribe to operate any school or otherwise oversee delivery of educational services to members of that tribe; and

(2) Is approved by the Secretary for the purposes of carrying out programs under the Act.

(Authority: 20 U.S.C. 3292)

[51 FR 22423, June 19, 1986, as amended at 53 FR 39219, Oct. 5, 1988]

Subpart B—What Kinds of Projects Does the Secretary Assist?

§ 500.10 What requirements pertain to all programs assisted under this Act for limited English proficient persons?

All programs assisted under this Act must—

(a) Give priority to serving LEP children having the greatest need for those programs, particularly those children whose usual language is not English;

(b) Be designed to enable students to achieve full competence in English; and

(c) Be designed to allow students to meet grade-promotion and graduation standards.

(Authority: 20 U.S.C. 3282)

§ 500.11 What programs are there for students of limited Spanish proficiency in Puerto Rico?

Projects funded in the Commonwealth of Puerto Rico may include programs of instruction, teacher training, curriculum development, research, evaluation, and testing designed to improve the English proficiency of children and may also make provision for serving the needs of students of limited Spanish proficiency.

(Authority: 20 U.S.C. 3291(j))

§ 500.12 How may programs assisted under the Act enhance students' instruction?

Programs assisted under the Act may—

(a) Provide technology-based instruction;

(b) Expand the educational calendar of the schools in which the students are enrolled to include programs before and after school and during the summer months; and

(c) Lower pupil-teacher ratios.

(Authority: 20 U.S.C. 3291 (a) and (d)(3)(D))

[53 FR 39219, Oct. 5, 1988]

Subpart C—How Does One Apply for an Award?

OPEN MEETING CERTIFICATION

§ 500.15 Open meeting certification.

(a) This section implements section 1006 of the Elementary and Secondary Education Act of 1965, as amended.

(b) Section 1006 requires a local educational agency [LEA] that submits an application under a program subject to this subpart to certify that the LEA has held an open meeting regarding the contents of the application.

(c) An LEA that must comply with this section shall—

(1) Give reasonable notice of the general public's opportunity to testify or otherwise comment at an open meeting regarding the subject matter of the application.

(2) Hold the open meeting;

(3) Consider comments obtained at the meeting in developing the final application; and

(4) Certify in the application submitted to the Secretary that the LEA has held an open meeting regarding the application, as required by this section.

(Authority: 20 U.S.C. 887e)

[52 FR 27805, July 24, 1987]

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—What Evaluation Requirements Must Be Met by a Recipient?

§ 500.50 What evaluation requirements apply to a grantee?

(a) This section establishes a comprehensive design of the general evaluation requirements and standards that a grantee funded under programs authorized under part A of Title VII must meet in carrying out an annual evaluation of a project which provides instructional services to limited English proficient persons.

(b) A grantee's evaluation must comply with the following requirements:

(1) A grantee's evaluation design must include a measure of the educational progress of project participants when measured against an appropriate nonproject comparison group.

(2) A grantee's evaluation design must meet the following technical standards:

(i) *Representativeness of evaluation findings.* The evaluation results must be computed so that the conclusions apply to the persons, schools or agencies served by the projects.

(ii) *Reliability and validity of evaluation instruments and procedures.* The evaluation instruments used must consistently and accurately measure progress toward accomplishing the objectives of the project, and must be appropriate considering factors such as the age, grade, language, degree of language fluency and background of the persons served by the project.

(iii) *Evaluation procedures that minimize error.* The evaluation procedures must minimize error by providing for proper administration of the evaluation instruments, at twelve-month testing intervals, accurate scoring and transcription of results, and the use of analysis and reporting procedures that are appropriate for the data obtained from the evaluation.

(iv) *Valid measurement of academic achievement.* The evaluation procedures must provide objective measures of the academic achievement of participants related to English language proficiency, native or second language proficiency (for programs of developmental bilingual education), and other subject matter areas.

(3)(i) A grantee's evaluation must provide information on the academic achievement of—(A) Current participants in the project, who are—

(*1*) Children who are limited English proficient; and

(*2*) Children whose language is English; and

(B) Children who were formerly served in the project as limited English proficient, have exited from the program, and are now in English language classrooms.

(ii) This information must include—

(A) The amount of time (in years or school months, as appropriate) the participants received instructional services in the project, and as appropriate, in another instructional setting;

(B) The participants' progress in achieving English language proficiency and, for programs of developmental bilingual education, progress in another language; and

(C) The former participants' academic progress in English language classrooms.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3303)

§ 500.51 What evaluation information must a grantee collect?

In carrying out the annual evaluation under § 500.50, a grantee shall collect information on—

(a) The educational background, needs, and competencies of the limited English proficient persons served by the project;

(b) The specific educational activities undertaken pursuant to the project;

(c) The pedagogical materials, methods, and techniques utilized in the program;

(d) With respect to classroom activities, the relative amount of instructional time spent with students on specific tasks;

(e) The educational and professional qualifications, including language competencies, of the staff responsible for planning and operating the project; and

(f) The specific activities undertaken to improve pre-referral evaluation procedures and instructional programs for LEP children who may be handicapped or gifted and talented.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3303)

[51 FR 22423, June 19, 1986, as amended at 53 FR 39219, Oct. 5, 1988; 54 FR 53319, Dec. 28, 1989]

§ 500.52 What information must a grantee report to the Secretary?

A grantee shall report to the Secretary annually, the information collected in § 500.51 and an evaluation of the overall progress of the project including the extent of educational progress achieved through the project measured, as appropriate, by—

(a) Tests of academic achievement in English language arts, and for programs of developmental bilingual education, second language arts;

(b) Tests of academic achievement in subject matter areas; and

(c) Changes in the rate of student—

(1) Grade-retention;

(2) Dropout;

(3) Absenteeism;

(4) Placement in programs for the gifted and talented; and

(5) Enrollment in postsecondary education institutions.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3303)

[51 FR 22423, June 19, 1986, as amended at 53 FR 39219, Oct. 5, 1988]

PART 501—BILINGUAL EDUCATION: BASIC PROGRAMS

Subpart A—General

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501.4 What definitions apply to the Basic Programs?

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501.10 What activities are eligible for assistance?
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501.20 What must an applicant include in its application for assistance?
501.21 What requirements pertain to the application advisory council and the parent advisory committee?
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501.23 What requirements pertain to preservice activities?
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501.30 How does the Secretary evaluate an application?
501.31 What selection criteria does the Secretary use?
501.32 What additional factors does the Secretary consider in awarding grants?
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ec.

01.41 What additional requirements apply to programs of transitional bilingual education?

01.42 How long may a student remain in a Program of Transitional Bilingual Education or a Special Alternative Instructional Program?

AUTHORITY: 20 U.S.C. 3281-3341, unless therwise noted.

SOURCE: 51 FR 22426, June 19, 1986, unless therwise noted.

Subpart A—General

501.1 Basic Programs.

The Basic Programs provide assistnce to eligible applicants for—

(a) Programs of transitional bilinual education authorized under secion 7021(a)(1) of the Act;

(b) Programs of developmental bilinual education authorized under secion 7021(a)(2) of the Act; or

(c) Special alternative instructional rograms authorized under section 021(a)(3) of the Act.

Authority: 20 U.S.C. 3291(a) (1), (2), and 3))

51 FR 22426, June 19, 1986, as amended at 3 FR 39219, Oct. 5, 1988]

501.2 Who is eligible to apply for assistance under Basic Programs?

(a) The following parties are eligible o apply for assistance under this part:

(1) Local educational agencies LEAs).

(2) Institutions of higher education IHEs), including junior or community colleges, that apply jointly with one or more LEAs.

(b) In the case of an application submitted by an IHE jointly with one or more LEAs, an LEA must be designated as the applicant in the group agreement required under 34 CFR 75.128.

Authority: 20 U.S.C. 3291(b)(1)(A))

§ 501.3 What regulations apply to Basic Programs?

The following regulations apply to Basic Programs:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 501, xcept as provided in paragraph (c) of his section.

(c) The regulations in this Part 501 do not apply to second- and third-year noncompeting continuation grants in fiscal year (FY) 1989 and third-year noncompeting continuation grants in FY 1990. The regulations applicable to these noncompeting continuation grants are the regulations applicable in FY 1988.

(Authority: 20 U.S.C. 3291(a) (1), (2), and (3))

[51 FR 22426, June 19, 1986, as amended at 53 FR 39219, Oct. 5, 1988]

§ 501.4 What definitions apply to the Basic Programs?

The definitions in 34 CFR 500.4 apply to the Basic Programs.

(Authority: 20 U.S.C. 3283, 3291)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 501.10 What activities are eligible for assistance?

The Secretary provides assistance for the following activities:

(a) Establishing, operating, or improving basic programs.

(b) During the first twelve months of a project, a grantee may engage exclusively in preservice activities. These activities do not include providing instructional services to limited English proficient (LEP) children. Activities may include, but are not limited to—

(1) Program design;

(2) Materials development;

(3) Staff recruitment and training;

(4) Development of evaluation mechanisms and procedures; and

(5) Activities to involve parents in the educational program and to enable parents and family members to assist in the education of LEP children.

(c) Providing or securing training for personnel participating or preparing to participate in the program that will assist them to meet State and local certification requirements. To the extent possible, college or university credit must be awarded for the training.

(Authority: 20 U.S.C. 3291(a) (1), (2), and (3), (d)(1)(B), and (f)(7))

[51 FR 22426, June 19, 1986, as amended at 53 FR 39219, Oct. 5, 1988]

§ 501.11 What level of commitment to continue the program must the applicant demonstrate?

(a)(1) The purpose of grants under this part is to build the capacity of the grantee to provide a program, on a regular basis, similar to that proposed for assistance, when Federal assistance under the project is reduced or no longer available.

(2) The program to be provided must be of sufficient size, scope, and quality to promise significant educational improvement for LEP children.

(b) To carry out this purpose—

(1) The Secretary funds a project only if the applicant demonstrates a realistic plan in its application to develop its programmatic capacity for serving LEP children and to assume financial responsibility for the program when Federal assistance is reduced or no longer available;

(2) The Secretary reduces the level of Federal assistance in each successive year of the project, unless—

(i) The plan under paragraph (b)(1) of this section provides for an increased commitment of local funds to provide expanded special services for greater numbers of LEP children in each successive year of the project; or

(ii) Based on unforeseen circumstances, such as a substantial influx of LEP children to the school district, the grantee—in an application for a successive budget period under the project—amends the plan under paragraph (b)(1) of this section to assure the Secretary that it will provide expanded services; and

(3) The Secretary, in determining the funding level for each successive year of a project, and in determining whether to renew a project after its first three years, in accordance with § 501.34, considers the extent to which the grantee has successfully carried out its plan under paragraph (b)(1) of this section.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3291(f)(6))

Subpart C—How Does One Apply for an Award?

§ 501.20 What must an applicant include in its application for assistance?

An application must—

(a) Include the information and assurances required under—

(1) Section 7021(c)(2) of the Act; and

(2) 34 CFR 500.20, 501.20 through 501.25 and 501.32, and 501.33, if applicable; and

(b) Provide assurances that the project will—

(1) Use only qualified personnel, who are proficient in spoken and written English, and, if appropriate, any other language or languages used for instruction;

(2) Comply with the non-supplanting requirements of section 7021(f)(4) of the Act;

(3) Comply with the parent advisory committee requirements in § 501.21(c).

(4) Use student evaluation and assessment procedures appropriate for LEP students; and

(5) Identify and serve any handicapped LEP students in accordance with the requirements of the EHA.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3291)

[51 FR 22426, June 19, 1986, as amended at 53 FR 39220, Oct. 5, 1988; 54 FR 53320, Dec. 28, 1989]

§ 501.21 What requirements pertain to the application advisory council and the parent advisory committee?

An applicant shall—

(a) Establish an application advisory council, of which a majority must be parents and other representatives of the children to be served in the program, to assist in the development of the application;

(b) Submit with its application documentation of its consultation with the council and the council's comments on the application and on the decision to submit an application under one of the programs listed in § 501.1.

(c) Assure in its application that—

(1) In carrying out its project, the applicant will provide for continuing consultation with, and participation

by, a parent advisory committee composed of parents, teachers, and other interested individuals.

(2) The parent advisory committee will be selected by and predominantly composed of parents of LEP children participating in the program and may include members of the application advisory council; and

(3) In the case of a project carried out in a secondary school, the parent advisory committee will include representatives of the secondary school students participating in the project; and

(4) It will provide support for additional parent advisory activities if support is requested.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3291)

[51 FR 22426, June 19, 1986, as amended at 53 FR 39220, Oct. 5, 1988]

§ 501.22 What requirements pertain to the participation of children enrolled in nonprofit private schools?

(a) An applicant shall demonstrate in its application that—

(1) In designing the project the applicant has consulted with appropriate private school officials and has taken into account the needs of LEP children enrolled in nonprofit private elementary and secondary schools in the area to be served; and

(2) The applicant will make provision for participation of the LEP children enrolled in nonprofit private schools—

(i) On a basis comparable to that provided for the public school children; and

(ii) Consistent with the number of those children enrolled in nonprofit private schools in the area to be served whose educational needs are of the type and whose language and grade level are of a similar type to those the program is intended to address. (See 34 CFR 75.650 Participation of students enrolled in private schools.)

(b) If the Secretary determines that an applicant is unable or unwilling to provide for the participation of LEP children enrolled in nonprofit private schools as required by this section, the Secretary—

(1) Withholds approval of the application until the applicant demonstrates that it is in compliance with the requirements of this section; or

(2) Reduces the amount of the grant by the amount the Secretary needs to—

(i) Arrange to assess the needs of children in nonprofit private schools in the area to be served; and

(ii) Carry out a program for limited English proficient persons which meets the needs of those children.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3291 (f)(2), (k))

§ 501.23 What requirements pertain to preservice activities?

An applicant shall demonstrate in its application how it plans to conduct the preservice activities described in § 501.10(b) for the first twelve months of the grant.

(Authority: 20 U.S.C. 3291(d)(1)(B))

[53 FR 39220, Oct. 5, 1988]

§ 501.24 What requirements pertain to training activities?

An applicant shall demonstrate in its application that it will—

(a) Provide or secure training for persons participating or preparing to participate in the project that will assist them to meet State and local certification requirements and that, to the extent possible, will provide them with college or university credit;

(b) Base training on an assessment of the needs of the persons who will be participating in the project and on the needs of the LEP children who will receive instruction under the project; and

(c) Apply the applicable provisions in 34 CFR 561.41 if the approved application provides for financial assistance to participants.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3291(f)(7))

[51 FR 22426, June 19, 1986, as amended at 53 FR 39220, Oct. 5, 1988]

§ 501.25 What requirements pertain to the development of an evaluation plan?

An applicant shall demonstrate that its plan for evaluating the progress and achievements of the proposed project meets the requirements of 34 CFR 500.50 through 500.52.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3291(f)(4), 3303)

§ 501.26 What requirements pertain to SEA review of an application?

An applicant that seeks assistance shall include evidence, in its application, that the SEA has been notified of the application and has been given an opportunity to offer recommendations on the application to the applicant and the Secretary and otherwise comply with the procedures in 34 CFR 75.156–75.160.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3291 (e)(5), (f)(9))

[53 FR 39220, Oct. 5, 1988, as amended at 54 FR 53320, Dec. 28, 1989]

Subpart D—How Does the Secretary Make an Award?

§ 501.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 501.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(b) The Secretary then applies the additional factors listed in § 501.32 in selecting applications for new grants.

(c) For special alternative instructional programs the Secretary also considers the specific factors in § 501.33 in selecting applications for new grants.

(Authority: 20 U.S.C. 3291 (a) (1), (2), (3), (c)(3), (f)(8), (g), and (h))

[51 FR 22426, June 19, 1986, as amended at 53 FR 39220, Oct. 5, 1988]

§ 501.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Description and assessment of need.* (17 points) The Secretary reviews each application to determine—

(1) The extent to which the applicant has identified the needs of the LEP students to be served in the program, including—

(i) The lack of proficiency of the LEP children in speaking, reading, writing, and understanding the English language; and

(ii) The degree of proficiency of the LEP children in their native language and in other courses or subjects of study.

(2) The reliability and objectivity of the methods used to identify those needs;

(3) The adequacy of the applicant's justification for concluding that the schools selected for the project enroll the children most in need of assistance within the LEA; and

(4) The extent to which the project will serve the children most in need of assistance, within the schools selected.

(b) *Program objectives and design.* (30 points)

(1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's design for meeting the needs of the LEP students to be served, including—

(i) The extent to which the instructional approach to be used will address the specific needs identified in the application; and

(ii) The extent to which other instructional approaches have been considered in choosing the instructional approach to be used in the project.

(2) The Secretary looks for the extent to which the project has specific and quantifiable objectives that will lead to the realization of the goals of the Act, including—

(i) The manner and time schedule by which the applicant will meet the needs of LEP children served by the project, including—

(A) The achievement of goals set for the children served by the project, especially the goal of achieving English

guage proficiency as quickly as pos-
e;
3) The identification of children
have achieved proficiency in the
glish language adequate for their
ctive participation in the regular
cational program;
C) Except for programs of develop-
ntal bilingual education, the trans-
of those children identified in
agraph (b)(2)(i)(B) of this section
he regular educational program as
n as possible; and
) The way the applicant plans to
its resources and personnel to
ieve each objective.
) The Secretary reviews each ap-
ation to determine the quality of
training plan for the project, in-
ling the extent to which—
The plan provides for training
sonnel in ways designed to meet
needs of LEP children to be served
he project; and
) Preservice training activities, if
, and inservice training activities
designed, to the extent possible, to
rd college or university credit.
) *Evaluation plan.* (8 points) The
retary reviews the strength of the
uation plan and its relationship to
educational goals of the project
the activities conducted to attain
se goals.

oss-REFERENCE: See 34 CFR 75.590 Eval-
on by the grantee.

) *Quality of personnel.* (15 points)
The Secretary reviews each appli-
on to determine the quality of the
owing personnel:
The principal classroom instruc-
al personnel.
) The project director, if one is to
sed, and other personnel essential
he success of the project.
) The Secretary considers—
The time that each person re-
ed to in paragraphs (d)(1) (i) and
of this section will commit to the
ect; and
) The extent to which the appli-
, as part of its nondiscriminatory
loyment practices, encourages ap-
ations for employment from per-
who are members of groups that
e been traditionally underrepre-
ed, such as—
) Members of racial or ethnic mi-
ty groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications under paragraph (d)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Commitment, capacity, and cost effectiveness.* (30 points) (1) The Secretary reviews each application to determine the extent of the applicant's commitment to special programs designed to meet the educational needs of LEP students.

(2) The Secretary reviews the strength of the applicant's plan under § 501.11(b)(1) to develop its programmatic capacity for serving LEP children and to assume financial responsibility for the program, including provision for—

(i) The gradual assumption of program costs during the proposed project period;

(ii) The adoption of successful components of the project into the regular educational programs that it conducts for LEP children;

(iii) Follow-up services to children who have achieved proficiency in English; and

(iv) Use of its non-Federal resources to provide a program on a regular basis, similar to that proposed, that will be of sufficient size, scope, and quality to promise significant improvement in the education of children of limited English proficiency in future years.

(3) If the applicant has carried out a previous project with funds under the Act, the Secretary also may consider the applicant's experience under that project in developing its programmatic capacity for serving LEP children and assuming financial responsibility for the program.

(4) The Secretary also reviews each application to determine the extent to which the project has—

(i) An adequate budget to support project activities in which costs are reasonable in relation to the objectives of the project; and

(ii) An effective plan of management that ensures proper and efficient administration of the project, including evidence that administrative costs constitute a minimum proportion of the total costs of the project.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3291 (a) (1), (2), (3), (c)(2), (d)(1)(B), (f) (1), (3), (6), (7), and 3303)

§ 501.32 What additional factors does the Secretary consider in awarding grants?

(a) In addition to the points awarded under § 501.31, the Secretary considers the following factors in awarding grants:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons.

(i) An applicant qualifies for points under this factor, if the Secretary determines that—

(A) The applicant has never received assistance under the Act; or

(B) The applicant has received assistance under the Act in the past but plans to serve a new language group. To receive points under this factor, at least 50 percent of the LEP children to be served by the project must belong to the new language group.

(ii) The Secretary does not give any points to an applicant that has received assistance under the Act in the past and plans to serve the same language group for which it received assistance.

(2) The relative need of the particular LEA(s) for the proposed program. The Secretary determines the relative need based upon—

(i) The overall concentration of LEP children in the district as compared to other applicants; and

(ii) Whether the applicant proposes to serve a significant number and proportion of LEP children who have arrived in the LEA during the last school year.

(3) The geographical distribution of LEP children. The Secretary considers the need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States.

(4) The number and proportion of children from low-income families to be benefited by the program.

(b) The Secretary distributes an additional 15 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the FEDERAL REGISTER how these 15 points will be distributed.

(Authority: 20 U.S.C. 3291 (f)(8), (h))

§ 501.33 What specific factors does the Secretary consider in awarding grants under special alternative instructional programs?

(a) For special alternative instructional programs, the Secretary additionally gives priority to applications based on—

(1) The administrative impracticability of establishing a bilingual education program due to the presence of a small number of students of a particular native language;

(2) The unavailability of personnel qualified to provide bilingual instructional services; and

(3) The presence of a small number of LEP students in the LEA's schools and the LEA's inability to obtain native language teachers because of isolation or regional location.

(b) The Secretary may distribute an additional 5 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the FEDERAL REGISTER how these 5 points are distributed.

(Authority: 20 U.S.C. 3291 (c)(3) and (g))

[51 FR 22426, June 19, 1986, as amended at 53 FR 39220, Oct. 5, 1988]

§ 501.34 What is the length of the project period?

(a) The Secretary approves a project period of three years.

(b) The Secretary renews a grant for two additional years, if the grantee demonstrates, in its renewal application, to the satisfaction of the Secretary that—

(1) The program complies with all applicable requirements in the Act and the regulations governing the project

(2) The grantee's project has made substantial and measurable progress in achieving the specific educational goals contained in its approved application, including the extent to which the grantee has—

(i) Met the objectives established in the application; and

(ii) Successfully carried out the provisions in the application for building its capacity to continue the project when Federal funding is reduced or no longer available; and

(3) There is a continuing need for the grantee's project.

(Authority: 20 U.S.C. 3291(d)(1) (A), (C))

Subpart E—What Conditions Must Be Met by a Recipient?

§ 501.40 What information must be given to parents?

(a) Before enrolling a child in the project (including each LEP child and each child whose language is English), and with sufficient advance notice to give the parents or legal guardians of the child adequate opportunity to decline enrollment, a grantee shall inform the parents or legal guardians of—

(1) The reasons for determining that the child is in need of special instructional services;

(2) The alternative educational programs that are available;

(3) The nature of the educational program for LEP students including—

(i) The instructional method to be used;

(ii) The instructional goals of the project;

(iii) The expected progress of the child in the project in English and other subject matter skills, including how quickly the child is expected to be able to function effectively in and to enter the regular educational program; and

(iv) The past effectiveness of comparable projects using a similar instructional method;

(4) The instructional alternatives for LEP students; and

(5) The option of and opportunity to decline enrollment of the child in the project.

(b) At appropriate intervals during the child's participation in the program, the grantee shall inform parents or legal guardians of the progress of their child in the program, including the extent to which the child is meeting the instructional goals referred to in paragraph (a)(3)(ii) of this section.

(c) The grantee shall make every effort to provide the information to parents in a language and form the parents understand.

(Approved by the Office of Management and Budget under control number 1885-0510)

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3283(c), and 3291(d)(1)(D))

[51 FR 22426, June 19, 1986, as amended at 53 FR 39220, Oct. 5, 1988; 54 FR 53320, Dec. 28, 1989]

§ 501.41 What additional requirements apply to programs of transitional bilingual education?

(a) A grantee under the programs of transitional bilingual education shall comply with all additional requirements found in the definition of program of transitional bilingual education in section 703(a)(4)(B)-(D) of the Act and 34 CFR 500.4 regarding—

(1) The forty percent restriction on the participation of children whose language is English;

(2) The participation of LEP children in regular classes in courses such as art, music, and physical education;

(3) The requirement that the programs must be offered in the schools the children normally attend; and

(4) How the children must be grouped in graded and nongraded classrooms.

(b) For the purpose of paragraph (a)(1) of this section, children previously served as LEP in programs funded under the Act may not be counted as children whose language is English.

(Authority: 20 U.S.C. 3283(a)(4) (B), (C), (D))

§ 501.42 How long may a student remain in a Program of Transitional Bilingual Education or a Special Alternative Instructional Program?

(a) A student may be enrolled in a program of Transitional Bilingual Education or a Special Alternative Instructional Program for a period of no more than 3 years, unless—

(1) The school in which the student is enrolled conducts a comprehensive evaluation of the overall academic progress of the student; and

(2) The results of the evaluation indicate the lack of English proficiency is impeding the academic progress of the student in meeting grade promotion and graduation standards and, in the case of a handicapped child, attainment of the objective in the child's individualized education program.

(b) Any student with respect to whom the requirements of paragraph (a)(1)-(2) of this section are met may remain in the program for a fourth year and, if these requirements are met again at the end of the fourth year, the student may remain in the program for a fifth year.

(c) The evaluation required by paragraph (a) of this section must involve teachers and school personnel familiar with the student's overall academic progress. The results of such an evaluation must be made available to the parents of the student. Each evaluation must indicate how the student's English language development will be addressed during the period the student is retained in the program. The students' academic program during that period shall emphasize mastery of English.

(d) No student may remain in a program described in paragraph (a) of this section for more than 5 years.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3291(d)(3))

[53 FR 39220, Oct. 5, 1988, as amended at 54 FR 53320, Dec. 28, 1989]

PART 520—BILINGUAL EDUCATION: DESEGREGATION SUPPORT PROGRAM

Subpart A—General

Sec.

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AUTHORITY: Sec. 751 of the Title VII Elementary and Secondary Education Act, Pub. L. 95-561, 20 U.S.C. 3261.

SOURCE: 46 FR 37596, July 21, 1981, unless otherwise noted.

Subpart A—General

§ 520.1 What is the Desegregation Support Program?

(a) The purpose of this program is to provide assistance to eligible local educational agencies (LEAs) that—

(1) Are implementing qualifying desegregation plans; and

(2) Have eligible minority group children enrolled in schools participating in the qualifying desegregation plans.

(b) This program supports two types of projects designed to complement an LEA's qualifying desegregation plan and to meet the special educational needs of eligible minority group children:

(1) Bilingual-bicultural curriculum development projects that develop curriculum for use in instructional programs of bilingual-bicultural education;

(2) Projects that implement instructional programs of bilingual-bicultural education.

(Authority: 20 U.S.C. 3261(a))

§ 520.2 (See 34 CFR 500.2(g)—Who is eligible for assistance under these programs?)

§ 520.3 What regulations govern this program?

(a) The following regulations apply to grants awarded under this program:

(1) The regulations in this part (34 CFR Part 520);

(2) The Bilingual Education: General Provisions (34 CFR Part 500) with the following exceptions:

(i) The definitions in 34 CFR 500.4 do not apply. Definitions for this program are contained in this part (34 CFR 520.4).

(ii) The Secretary approves a project period of from one to three years.

(3)(i) The following regulations under the Emergency School Aid Act, as in effect on September 30, 1982:

(A) Limitations on eligibility (34 CFR 280.21 through 280.24).

(B) Continuing conditions of eligibility (34 CFR 280.26).

(C) Show cause conferences (34 CFR 280.27).

(D) Waivers of ineligibility (34 CFR 280.28 through 280.32).

(E) Qualifying plans (34 CFR 280.42).

(ii) For the purposes of this program, the term "under the Act" as used in the Emergency School Aid Act regulations cited in this section (34 CFR 520.3(a)(3)(i)) shall mean "under section 751 of the Bilingual Education Act.

[46 FR 37596, July 21, 1981, as amended at 47 FR 52998, Nov. 24, 1982]

§ 520.4 What definitions apply?

In addition to terms defined in EDGAR (34 CFR Part 77), the following terms are used in this part:

Act means the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1965, as amended.

(Authority: 20 U.S.C. 3221)

Curriculum is considered to encompass the instructional activities, including the use of materials, planned and provided for students by the school or school system. The curriculum, therefore, is the planned interaction of students with instructional content, instructional resources, and instructional processes for the attainment of educational objectives.

(Authority: 20 U.S.C. 3261)

Emergency School Aid Act means the Emergency School Aid Act, Title VI of the Elementary and Secondary Education Act of 1965, as amended.

(Authority: 20 U.S.C. 3191)

Instructional program of bilingual-bicultural education means a program of instruction designed to meet the special educational needs of minority group children in elementary and secondary schools and having the following characteristics:

(1) There is instruction given in, and study of, English and the native language of the parents and grandparents of the minority group children.

(2) Instruction is given with appreciation for the heritage of the minority group children and of other children in American society.

(Authority: 20 U.S.C. 3261(a)(1)(A))

Minority group children means children who are from environments in which the native language is other than English and who, as a result of language barriers and cultural differences, do not have equal educational opportunity.

(Authority: 20 U.S.C. 3207(6), 3261)

Native language means the language normally used by an individual, or in the case of a child, the language normally used by the parents or grandparents of the child.

(Authority: 20 U.S.C. 3261(a)(1))

Qualifying desegregation plan means the desegregation plan that satisfies the requirements of section 606 of the Emergency School Aid Act (ESAA) and qualifies an LEA for assistance under this program.

(Authority: 20 U.S.C. 3261)

Subpart B—What Kinds of Projects Does the Secretary Assist?

§ 520.10 What activities are eligible for assistance?

The Secretary funds two types of projects which must be designed to complement the LEA's qualifying desegregation plan.

(a) *Bilingual-bicultural curriculum development projects.* An eligible LEA, or a nonprofit private organization that has received a request for curriculum development from one or more eligible LEAs may propose to develop curriculum for use in instructional programs of bilingual-bicultural education. This curriculum is designed to—

(1) Increase the skills of minority group children in understanding, speaking, reading, and writing both English and the native language of the parents or grandparents or the minority group children;

(2) Enhance the understanding of minority group children and their classmates about the history and cultural backgrounds of the minority group children; and

(3) Complement the LEA's qualifying desegregation plan.

(b) *Instructional programs of bilingual-bicultural education.*

(1) An eligible LEA may propose to implement—

(i) Curriculum developed under paragraph (a) of this section; or

(ii) Any other curriculum that the Secretary determines meets the requirements in paragraph (a) of this section.

(2) In its plan to implement an instructional program of bilingual-bicultural education, an LEA shall provide, as necessary, training for teachers, principals, and other educational personnel who work with minority group children, to enable them to provide services more effectively to those children.

(Authority: 20 U.S.C. 3231(a)(2) and 3261(a)(1) and (b))

Subpart C—How Does One Apply for a Grant?

§ 520.20 What requirements pertain to project committees?

(a) An LEA applying for a bilingual-bicultural curriculum development project or an instructional program of bilingual-bicultural education shall establish a project committee meeting the requirements of paragraph (b) of this section that will fully participate in the preparation of the application and in the implementation of the project and join in submitting the application.

(b)(1) The project committee must be broadly representative of parents, school officials, teachers, and other interested members of the community or communities to be served.

(2) At least half of the committee members must be parents.

(3) At least half of the committee members must be members of the minority group(s) whose educational needs the project is intended to meet.

(c) The LEA may use the following procedures, or other procedures it determines appropriate, to meet the requirements of paragraph (b):

(1) Solicit nominations for project committee membership from parents, other representatives of minority group children, and interested members of the community or communities to be served.

(2) Publish a solicitation of nominations for membership in a manner likely to bring the solicitation to the

attention of potential members; for example, publication of an announcement in a local newspaper or other local publication.

(3) Include at least seven members on the committee.

(d) The LEA shall provide the project committee with adequate resources (as determined by the LEA), including staff with language skills in the native language of the committee members.

(e) The LEA shall submit with its application—

(1)(i) Documentation of its consultations with the project committee;

(ii) The project committee's comments on the application; and

(iii) Documentation of support for the project signed by the majority of the members of the project committee; and

(2) An assurance that in carrying out its project, the applicant will provide for frequent consultations with, and participation by, the project committee.

(f) The requirements in paragraphs (a) through (e) of this section apply to a nonprofit organization applying for a bilingual-bicultural curriculum development project, with the following exceptions:

(1) The committee must consist of at least ten persons; and

(2) The committee must exercise policy-making authority with respect to the program or project.

(Authority: 20 U.S.C. 3223(a)(4)(E) and 3261(a)(2))

§ 520.21 How does the Secretary provide for the participation of children enrolled in nonprofit private schools in an instructional program of bilingual-bicultural education?

(a) An applicant shall provide for the participation in its project of minority group children enrolled in nondiscriminating nonprofit private schools in the LEA, whose participation would assist in achieving the purposes of the LEA's qualifying desegregation plan, if the educational needs, language(s), and grade level(s) of those children are of a similar type to those which the project is intended to address.

(b)(1) In meeting the requirements in paragraph (a) of this section, the applicant shall comply with the requirements in EDGAR (34 CFR 76.651 through 76.662).

(2) For the purpose of this section, the terms "subgrantee" and "subgrant" as used in those sections of EDGAR mean "grantee" and "grant", respectively.

(c) If an applicant fails to provide for the participation of minority group children enrolled in nonprofit private schools as required in paragraph (a) of this section, the Secretary—

(1) Withholds approval of the application until the applicant demonstrates that it will provide for the participation of those children; or

(2) Reduces the amount of the grant by the amount the Secretary needs to—

(i) Arrange to assess the needs of minority group children in nonprofit private schools whose participation would assist in achieving the purposes of the LEA's qualifying desegregation plan; and

(ii) Carry out an instructional program of bilingual-bicultural education for minority group children whose educational needs, language(s), and grade level(s) are of a similar type to those which the project is intended to address.

(d)(1) In addition to meeting the requirements in paragraphs (a) and (b) of this section, an applicant may, at its option, provide an instructional program of bilingual-bicultural education for minority group children and their classmates enrolled in nondiscriminating nonprofit private schools in the LEA, whose participation would assist in achieving the purposes of the LEA's qualifying desegregation plan, although the educational needs, language(s), and grade level(s) of the minority group children are not of a type similar to those of the public school participants.

(2) An applicant that proposes to provide services under paragraph (d)(1) of this section to children enrolled in nonprofit private schools shall comply with the requirements in 34 CFR 76.657 through 76.662.

(Authority: 20 U.S.C. 3231(b)(3)(C)(ii) and (f), 3261(a)(1))

§ 520.22 What requirements pertain to training activities?

An LEA proposing to carry out an instructional program of bilingual-bicultural education shall—

(a) Assess the training needs of the teachers, principals, and other educational personnel who work with minority group children in school(s) participating in the qualifying desegregation plan;

(b) Include in its application plans for training activities that provide, as necessary, training for teachers, principals, and other education personnel who work with minority group children; and

(c) Include in its budget adequate funds for these activities.

(Authority: 20 U.S.C. 3261(a)(1))

§ 520.23 What requirements pertain to nonprofit private organizations that apply for a bilingual-bicultural curriculum development project?

A nonprofit private organization must include in its application—

(a) Evidence that it has received a request from one or more eligible LEAs to develop bilingual-bicultural curriculum under this program; and

(b) Evidence that it has the capacity to obtain the services of adequately trained and qualified staff.

(Authority: 20 U.S.C. 3261(a)(2))

Subpart D—How Does the Secretary Make a Grant?

§ 520.30 How does the Secretary evaluate an application proposing a bilingual-bicultural curriculum development project?

The Secretary considers the following criteria worth a total of 150 possible points. The maximum possible score for each criterion is indicated in parentheses.

(a) *Curriculum design.* (40 points)

The Secretary considers the quality of the applicant's plans for designing a curriculum that complements—

(1) The LEA's qualifying desegregation plan; and

(2) Any programs of Federal financial assistance that are related to the purposes of this program.

(b) *Needs identification.* (10 points)

The Secretary considers the extent to which the applicant has identified, by reliable and objective means, the nature and magnitude of the special educational needs of the minority group children.

(c) *Impact.* (40 points total)

The Secretary considers the extent to which the proposed curriculum will—

(1) Meet the special educational needs of minority group children; (15 points);

(2) Increase the skills of minority group children in understanding, speaking, reading, and writing both English and the native language of the parents or grandparents of the minority group children (10 points);

(3) Enhance the understanding of the minority group children and their classmates about the history and cultural backgrounds of the minority group children (10 points); and

(4) Involve parents of minority group children in the education of their children (5 points).

(d) *Curriculum evaluation.* (15 points)

The Secretary considers the adequacy of the applicant's plans—

(1) To test the curriculum as it is developed to determine whether it meets the needs identified in the application; and

(2) To include teachers, principals, and other educational personnel from schools participating in the qualifying desegregation plan in the evaluation of the curriculum.

(e) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(f) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

NOTE: The qualifications of project personnel should relate to the population served by the project. For example, when reviewing projects that serve children of a particular ethnic population, the Secretary looks for project personnel who have extensive experience or expertise in the culture and language of that population.

(g) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(h) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 20 U.S.C. 3261(a)(1) and 20 U.S.C. 3474(a))

§ 520.31 How does the Secretary evaluate an application proposing an instructional program of bilingual-bicultural education?

The Secretary considers the following criteria worth a total of 150 possible points. The maximum possible score for each criterion is indicated in parentheses.

(a) *Project design.* (40 points)

The Secretary considers the quality of the applicant's plans to coordinate the implementation of the instructional program of bilingual-bicultural education with—

(1) Activities carried out under the LEA's desegregation plan; and

(2) Any programs of Federal financial assistance that are related to the purpose of the program.

(b) *Rationale for selection of project sites and participants.* (5 points)

The Secretary considers the rationale and the appropriateness of the methods used to select the schools and children to be served by the project.

(c) *Needs assessment.* (10 points)

The Secretary considers the adequacy of the applicant's assessment of the needs of the children to be served by the project, including assessments of—

(1) The special educational needs of the minority group children;

(2) Proficiency of the minority group children in understanding, speaking, reading, and writing both English and the native language(s) of the parents or grandparents of the mi-

nority group children to be served by the project; and

(3) Knowledge and understanding of the children of the history and cultural heritage of the minority group children to be served;

(d) *Impact.* (40 points total)

The Secretary considers the extent to which the proposed program of bilingual-bicultural education will—

(1) Meet the special educational needs of the minority group children (15 points);

(2) Increase the skills of minority group children in understanding, speaking, reading, and writing both English and the native language of the parents or grandparents of the minority group children (10 points);

(3) Enhance the understanding of the minority group children and their classmates about the history and cultural backgrounds of the minority group children and increase their tolerance and appreciation for ethnic differences, (10 points); and

(4) Involve parents of minority group children in the education of their children (5 points).

(e) *Plan of operation.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(f) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (unless the building principal is to be so designated);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (f)(2) (i) and (ii) of this section plans to commit to the project;

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic groups, women, handicapped persons, and the elderly; and

(v) The extent to which the building principal is involved in the daily administration of the project.

(3) To determine the qualifications of a person, the Secretary considers evidence of the past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

NOTE: The qualifications of project personnel should relate to the population served by the project. For example, when reviewing projects that serve children of a particular ethnic population, the Secretary looks for project personnel who have extensive experience or expertise in the culture and language of that population.

(g) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(Authority: See 34 CFR 75.590 Evaluation by the grantee)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(h) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows

that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(i) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 20 U.S.C. 3261(a)(1) and 20 U.S.C. 3474(a))

§ 520.32 What factors does the Secretary consider in awarding grants?

(a) The Secretary considers the rank order of the application as determined by applying the selection criteria in § 520.31 (for applications proposing instructional programs of bilingual-bicultural education).

(b) The Secretary also considers the need for the proposed activities in the LEA(s) to be served by the project.

(1) In determining need under paragraph (b) of this section, the Secretary considers—

(i) The number of minority group children who would benefit from the program of bilingual-bicultural education;

(ii) Assistance the applicant is receiving under other programs of Federal financial assistance that are related to the purposes of this program; and

(iii) Previous assistance that the applicant has received under this program or under section 708 of the Emergency School Aid Act and the need for further assistance.

(2) In determining need under paragraph (b)(1) of this section, the Secretary uses—

(i) Information provided in the application;

(ii) Information provided in the SEA review of the application (under 34 CFR 500.20);

(iii) Information on current and past educational and training activities supported under the Bilingual Education Act and the Emergency School Aid Act; and

(iv) Other information available to the Secretary; and

(c) For applications proposing to implement instructional programs of bilingual-bicultural education, the Secretary gives priority to applications that propose to implement bilingual-bicultural curriculum developed under this program, if that curriculum is determined to be appropriate to the needs of the LEA.

(Authority: 20 U.S.C. 3231(c), 3261)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 520.40 What requirements pertain to all grantees?

A grantee shall—

(a) Work closely with its project committee in carrying out project activities; and

(b) Coordinate project activities with—

(1) The goals and implementation of the LEA's qualifying desegregation plan; and

(2) Any programs of Federal financial assistance that are related to the purposes of the program.

(c) A grantee shall comply with the "supplement not supplant" requirement in section 721(b)(3)(G) of the Act.

(Authority: 20 U.S.C. 3231(b)(3)(G) and 3261(a) (2) and (3))

§ 520.41 What additional requirement pertains to grantees carrying out an instructional program of bilingual-bicultural education?

A grantee shall inform parents of children participating in the program of the instructional goals of the program and the progress of their children in the program.

(Authority: 20 U.S.C. 3223(a)(4)(F))

PART 524—BILINGUAL EDUCATION: ACADEMIC EXCELLENCE PROGRAM

Subpart A—General

Sec.
524.1 Academic Excellence Program.
524.2 Who is eligible to apply for assistance?
524.3 What regulations apply?
524.4 What definitions apply?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

524.10 What are the project activities?

Subpart C—How Does One Apply for an Award?

524.20 How does an applicant apply for a grant under this program?
524.21 How does an SEA nominate an applicant under this program?

Subpart D—How Does the Secretary Make an Award?

524.30 How does the Secretary evaluate an application?
524.31 What selection criteria does the Secretary use?
524.32 What additional factors does the Secretary consider?
524.33 What is the length of the project period?

Subpart E—What Conditions Must Be Met by a Recipient?

524.40 What requirements must a grantee meet concerning a model site?

AUTHORITY: 20 U.S.C. 3281-3341, unless otherwise noted.

SOURCE: 52 FR 30322, Aug. 13, 1987, unless otherwise noted.

Subpart A—General

§ 524.1 Academic Excellence Program.

The Academic Excellence Program identifies and disseminates information about programs of transitional bilingual education, development bilingual education, or special alternative instruction that—

(a) Have an established record of providing effective, academically excellence instruction; and

(b) Are designed to—

(1) Serve as models of exemplary bilingual education programs; and

(2) Facilitate the dissemination of effective bilingual education practices for limited English proficient students that—

(i) Can be models for effective schools using effective teaching practices; or

(ii) Serve as models of exemplary bilingual education programs.

(Authority: 20 U.S.C. 3283(a)(8))

[52 FR 30322, Aug. 13, 1987, as amended at 53 FR 39221, Oct. 5, 1988]

§ 524.2 Who is eligible to apply for assistance?

(a) Subject to the limitations in paragraph (b) of this section, the following parties are eligible for assistance under this part:

(1) Local education agencies (LEAs).

(2) Institutions of higher education (IHEs), including junior or community colleges.

(3) Private nonprofit organizations applying separately or jointly.

(b) In order to be considered for assistance under this part, an applicant must administer a program of transitional bilingual education, developmental bilingual education, or special alternative instruction that is either—

(1) Nominated by its State educational agency (SEA) in accordance with § 524.20; or

(2) Approved by the Program Effectiveness Panel (PEP) as defined in 34 CFR 785.5.

(Authority: 20 U.S.C. 3291(b)(2), 3283(a)(8))

[52 FR 30322, Aug. 13, 1987, as amended at 53 FR 39221, Oct. 5, 1988]

§ 524.3 What regulations apply?

The following regulations apply to the Academic Excellence Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 524, except as provided in paragraph (c) of this section.

(c) The regulations in this Part 524 do not apply to second- and third-year noncompeting continuation grants in FY 1989 and third-year noncompeting continuation grants in FY 1990. The regulations applicable to these noncompeting continuation grants are the regulations applicable in FY 1988.

(Authority: 20 U.S.C. 3291)

[52 FR 30322, Aug. 13, 1987, as amended at 53 FR 39221, Oct. 5, 1988]

§ 524.4 What definitions apply?

The following definitions apply to the Academic Excellence Program:

(a) The definitions identified in 34 CFR 500.4.

(b) The definitions of "Program Effectiveness Panel" and "PEP approval" in 34 CFR 785.5.

(c) "Adoption" means implementation of the applicant's program of transitional bilingual education, developmental bilingual education, or special alternative instruction in a new setting.

(Authority: 20 U.S.C. 3291)

[52 FR 30322, Aug. 13, 1987, as amended at 53 FR 39221, Oct. 5, 1988]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 524.10 What are the project activities?

(a) A project must—

(1) Develop material—

(i) To inform LEAs and other service providers such as private schools or institutions of higher education conducting an elementary or secondary education program about the grantee's program; and

(ii) To use for training in conjunction with adoption of the program;

(2) Conduct outreach activities to inform potential users about the grantee's program and the availability of assistance from the grantee in its adoption;

(3) Make necessary arrangements to inform interested LEAs and other educational service providers about the exemplary program;

(4) Assist in adoption by providing training and technical assistance to educational personnel in the preparation, implementation, and evaluation stages of an adoption; and

(5) Evaluate the quality and effectiveness of the activities listed in paragraphs (a) (1), (2), (3), and (4) of this section.

(b) Assistance under this part may not be used to pay for direct instructional services to children.

(Authority: 20 U.S.C. 3291)

[52 FR 30322, Aug. 13, 1987]

Subpart C—How Does One Apply for an Award?

§ 524.20 How does an applicant apply for a grant under this program?

(a) Prior to submitting its application, an applicant must obtain—

(1) PEP approval of its program of transitional bilingual education, developmental bilingual education, or special alternative instruction; or

(2) The nomination of its program of transitional bilingual education, developmental bilingual education, or special alternative instruction by the SEA of the State in which the program is located.

(b) An application must document compliance with paragraph (a) of this section and include—

(1) The information required under section 7021(c)(4) of the Act; and

(2) Assurances that the exemplary program is currently operating at a local site.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3291(a)(4))

[52 FR 30322, Aug. 13, 1987, as amended at 53 FR 39221, Oct. 5, 1988]

§ 524.21 How does an SEA nominate an applicant under this program?

(a) The SEA of the State in which the program is located may nominate up to eight programs under this part.

(b) In nominating programs, the SEA shall consider—

(1) Documented evidence of the established record of effectiveness of the program in teaching English to LEP students;

(2) Exemplary features of the program; and

(3) Other relevant information provided by the applicant.

(c) The SEA shall provide assurances to the Secretary that—

(1) The program has been reviewed with respect to each of the factors referred to in section 7021(c)(4)(A)-(D) of the Act and the criterion in § 524.31(a); and

(2) The program is exemplary.

(Authority: 20 U.S.C. 3291(a)(4))

[52 FR 30322, Aug. 13, 1987, as amended at 53 FR 39221, Oct. 5, 1988]

Subpart D—How Does the Secretary Make an Award?

§ 524.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a new grant on the basis of the criteria listed in § 524.31. The Secretary awards a maximum of 100 points for all the criteria. The maximum possible score for each criterion is indicated in parentheses after the criterion heading.

(b) The Secretary then applies the additional factors listed in § 524.32.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3291(a)(4))

§ 524.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Educational significance.* (30 points) The Secretary reviews each application to determine the significance of the program in—

(1) Teaching English to LEP children;

(2) Using techniques that are suitable for adoption by other providers of educational services to LEP children.

(b) *Project design and objectives.* (25 points)

(1) The Secretary considers the extent to which the project has specific and quantifiable objectives including—

(i) An effective plan of management that ensures the proper and efficient administration of the project; and

(ii) Effective strategies for—

(A) Developing and disseminating information about the exemplary program;

(B) Training and assisting potential users in adoption of the program;

(C) Monitoring and evaluating adoption of the program; and

(D) Using resources and personnel to achieve each objective.

(2) The Secretary considers the extent to which the project will help address identified needs.

(3) The Secretary reviews each application to determine the ability of the applicant to maintain the exemplary program.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraph (c)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) Produce objective and quantifiable data including the evaluation of the performance of students who have received instruction at the adoption sites. The evaluation should, if possible, include per- and post-adoption testing of English language proficiency.

(2) The Secretary reviews the relationship of the evaluation plan to the goals of the project and the activities conducted to attain those goals.

Cross-Reference: See 34 CFR 75.590 Eval-ation by the grantee.

(e) *Coordination.* (5 points) The Secetary reviews each application to deermine the extent to which the appliant will coordinate activities with SEAs, Multifunctional Resource Ceners, the National Clearinghouse on Bilingual Education, and other providers of technical assistance serving programs for limited English proficient persons.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) the budget is adequate to support he project; and

(2) Costs are reasonable in relation o the objectives of the project.

(g) *Commitment and capacity.* (5 points) The Secretary reviews each application to determine the applicant's commitment to the dissemination and adoption of the exemplary program in he past, and the likelihood of the applicant's continued efforts to disseminate and achieve the adoption of the exemplary program when Federal assistance under this part ends.

Approved by the Office of Management and Budget under control number 1885-0003)

Authority: 20 U.S.C. 3291(a)(4))

§ 524.32 What additional factors does the Secretary consider?

(a) The Secretary consider the following additional factors in awarding grants:

(1) How dissemination and adoptoin of the model program would relate to—

(i) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons; and

(ii) The need to provide funding according to the distribution of LEP children throughout the Nation, and within each of the States.

(2) The relative numbers of children from low-income families likely to be benefited by the project.

(b) The Secretary distributes an additional 15 points among the factors listed in paragraph (a) of this section. The Secretary indicates how these 15 points are distributed in the application notice published in the Federal Register.

(Authority: 20 U.S.C. 3291)

§ 524.33 What is the length of the project period?

The Secretary approves a project period of three years for an award under the Academic Excellence Program.

(Authority: 20 U.S.C. 3291(d)(2))

Subpart E—What Conditions Must Be Met by a Recipient?

§ 524.40 What requirements must a grantee meet concerning a model site?

A grantee funded under the Academic Excellence Program shall maintain a model site where—

(a) Visitors can observe the exemplary program; and

(b) There are educational staff who are experienced and knowledgeable about the program.

(Authority: 20 U.S.C. 3291(a)(4))

PART 525—BILINGUAL EDUCATION: FAMILY ENGLISH LITERACY PROGRAM

Subpart A—General

Sec.
525.1 Family English Literacy Program.
525.2 Who is eligible to apply for assistance under the Family English Literacy Program?
525.3 What regulations apply to the Family English Literacy Program?
525.4 What definitions apply to the Family English Literacy Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

525.10 What activities are eligible for assistance?

Subpart C—How Does One Apply for an Award?

525.20 What must an applicant include in its application for assistance?
525.21 What requirements pertain to the development of an evaluation plan?

Sec.

Subpart D—How Does the Secretary Make an Award?

525.30 How does the Secretary evaluate an application?
525.31 What selection criteria does the Secretary use?
525.32 What additional factors does the Secretary consider in awarding grants?
525.33 What is the length of the project period?

AUTHORITY: 20 U.S.C. 3281-3341, unless otherwise noted.

SOURCE: 51 FR 22430, June 19, 1986, unless otherwise noted.

Subpart A—General

§ 525.1 Family English Literacy Program.

The Secretary provides assistance for projects under the Family English Literacy Program as defined in 34 CFR 500.4.

(Authority: 20 U.S.C. 3283(a)(7))

§ 525.2 Who is eligible to apply for assistance under the Family English Literacy Program?

The following parties are eligible to apply for assistance under the Family English Literacy Program:

(a) Local educational agencies (LEAs).

(b) Institutions of higher education, including junior or community colleges.

(c) Private nonprofit organizations, applying separately or jointly.

(Authority: 20 U.S.C. 3291(b)(2))

§ 525.3 What regulations apply to the Family English Literacy Program?

The following regulations apply to the Family English Literacy Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 525, except as provided in paragraph (c) of this section.

(c) The regulations in this Part 525 do not apply to second- and third-year noncompeting continuation grants in FY 1989 and third-year noncompeting continuation grants in FY 1990. The regulations applicable to these noncompeting continuation grants are the regulations applicable in FY 1988.

(Authority: 20 U.S.C. 3283(a)(7), 3291(a)(5))

[51 FR 22430, June 19, 1986, as amended at 53 FR 39221, Oct. 5, 1988]

§ 525.4 What definitions apply to the Family English Literacy Program?

The definitions in 34 CFR 500.4 apply to this program.

(Authority: 20 U.S.C. 3283(a)(7))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 525.10 What activities are eligible for assistance?

(a) The Secretary provides assistance for activities designed to establish, operate, and improve family English literacy programs such as—

(1) Instruction designed to help limited English proficient (LEP) adults and out-of-school youth achieve competence in the English language;

(2) Instruction in methods by which parents and family members can facilitate the educational achievement of LEP children; and

(3) Instruction designed to enable aliens otherwise eligible for temporary resident status under section 245A of the Immigration and Nationality Act to achieve a minimal understanding of ordinary English, and a knowledge and understanding of history and government of the United States as required by section 312 of the Immigration and Nationality Act.

(b) Instruction under this program may be conducted exclusively in English or in English and the native language of the participants.

(Authority: 20 U.S.C. 3283(a)(7))

[51 FR 22430, June 19, 1986, as amended at 53 FR 39221, Oct. 5, 1988]

Subpart C—How Does One Apply for an Award?

§ 525.20 What must an applicant include in its application for assistance?

An application for an award under this program must contain the information required under section 7021(c)(5) of the Act and §§ 525.21 and 525.32.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3291(a)(5))

[51 FR 22430, June 19, 1986, as amended at 53 FR 39221, Oct. 5, 1988]

§ 525.21 What requirements pertain to the development of an evaluation plan?

An applicant shall demonstrate in its application that its plan for evaluating the progress and achievements of the proposed project meets the requirements of 34 CFR 500.50 through 500.52.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3291(a)(5), 3303)

Subpart D—How Does the Secretary Make an Award?

§ 525.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria isted in § 525.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses after the heading for the criterion.

(b) The Secretary then applies the additional factors listed in § 525.32.

Authority: 20 U.S.C. 3283 (a)(8), (h))

525.31 What selection criteria does the Secretary use?

The Secretary uses the following section criteria in evaluating each aplication:

(a) *Need and impact.* (25 points) The Secretary reviews each application to etermine the extent to which—

(1) There is a need for the proposed amily English literacy program;

(2) The methods used by the appliant to identify the needs are objecive and quantifiable;

(3) The project proposes to develop he skills of LEP adults and out-ofchool youth to achieve competence in nglish and to facilitate the educaional achievement of LEP children; nd

(4) The applicant gives preference for participation in the proposed project to parents and immediate family members of children enrolled in programs assisted under the Act.

(b) *Program objectives and design.* (27 points) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's design for meeting the needs of the persons to be served by the project and the likelihood that the project will meet those needs.

(c) *Commitment and capacity.* (15 points) The Secretary reviews each application to determine the applicant's commitment and capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(d) *Quality of personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of the following personnel:

(i) The principal classroom instructional personnel.

(ii) The project director, if one is to be used, and other personnel essential to the success of the project.

(2) The Secretary considers—

(i) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(ii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications under paragraph (d)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures the proper and efficient administration of the project, including evidence that administrative costs are a minimum proportion of the total costs of the project.

(f) *Evaluation plan.* (8 points) The Secretary reviews the strength of the evaluation plan and its relationship to the educational goals of the project and the activities conducted to attain those goals.

Cross-Reference: See 34 CFR 75.590 Evaluation by the grantee.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3283(a)(7))

§ 525.32 What additional factors does the Secretary consider in awarding grants?

(a) The Secretary considers the following additional factors in awarding grants:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons.

(2) The need to provide assistance in proportion to the distribution of LEP children throughout the Nation, and within each of the States.

(3) The need for financial assistance to establish, operate, or improve programs for limited English proficient persons.

(4) The relative numbers of children from low-income families sought to be benefited by the program.

(b) The Secretary distributes an additional 15 points among the criteria listed in paragraph (a) of this section. The Secretary indicates how these 15 points are distributed in the application notice published in the Federal Register.

(Authority: 20 U.S.C. 3291)

§ 525.33 What is the length of the project period?

The Secretary approves a project period of three years for an award under the Family English Literacy Program.

(Authority: 20 U.S.C. 3291(b)(2))

PART 526—BILINGUAL EDUCATION: SPECIAL POPULATIONS PROGRAM

Subpart A—General

Sec.

526.1 Special Populations Program.
526.2 Who is eligible to apply for assistance under the Special Populations Program?
526.3 What regulations apply to the Special Populations Program?
526.4 What definitions apply to the Special Populations Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

526.10 What types of projects may be funded?

Subpart C—How Does One Apply for an Award?

526.20 What requirements pertain to the development of an evaluation plan?

Subpart D—How Does the Secretary Make an Award?

526.30 What priorities may the Secretary establish?
526.31 How does the Secretary evaluate an application?
526.32 What selection criteria does the Secretary use?
526.33 What is the length of the project period?

Subpart E—What Conditions Must Be Met by a Recipient?

526.40 What information must be given to parents?

Authority: 20 U.S.C. 3281-3341, unless otherwise noted.

Source: 51 FR 22431, June 19, 1986, unless otherwise noted.

Subpart A—General

§ 526.1 Special Populations Program.

The Special Populations Program provides assistance to preschool, special education, and gifted and talented programs which are—

(a) For limited English proficient (LEP) children; and

(b) Preparatory or supplementary to programs such as those assisted under the Act.

(Authority: 20 U.S.C. 3291(a)(6))

§ 526.2 Who is eligible to apply for assistance under the Special Populations Program?

The following parties are eligible for assistance under the Special Populations Program:

(a) Local educational agencies (LEAs).

(b) Institutions of higher education, including junior or community colleges.

(c) Private nonprofit organizations.

(Authority: 20 U.S.C. 3291(b)(2))

§ 526.3 What regulations apply to the Special Populations Program?

The following regulations apply to the Special Populations Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 526, except as provided in paragrah (c) of this section.

(c) The regulations in this Part 526 do not apply to second- and third-year noncompeting continuation grants in FY 1989 and third-year noncompeting continuation grants in FY 1990. The regulations applicable to these noncompeting continuation grants are the regulations applicable in FY 1988.

(Authority: 20 U.S.C. 3291(a)(6))

[51 FR 22430, June 19, 1986, as amended at 53 FR 39221, Oct. 5, 1988]

§ 526.4 What definitions apply to the Special Populations Program?

The following definitions apply to the Special Populations Program:

(a) The definitions in 34 CFR 500.4.

(b) The definitions implementing Part B of the Education of the Handicapped Act (EHA-B) for—

(1) "Handicapped children" in 34 CFR 300.5; and

(2) "Individualized education program" in 34 CFR 300.340.

(Authority: 20 U.S.C. 1401-1420, 3291(a)(6))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 526.10 What types of projects may be funded?

The Secretary provides assistance for activities that are preparatory or supplementary to programs, such as those assisted under the Act, designed to assist LEP students in achieving full competence in English. Special Populations projects may establish, operate, and improve—

(a) Preschool programs for LEP children who have not reached elementary school age;

(b) Programs for LEP children who receive services in accordance with the EHA-B and which are supplementary to the services required by the EHA-B; and

(c) Programs for LEP children who by reason of outstanding abilities are capable of high performance.

(Authority: 20 U.S.C. 3291(a)(6))

Subpart C—How Does One Apply for an Award?

§ 526.20 What requirements pertain to the development of an evaluation plan?

An applicant shall demonstrate in its application that its plan for evaluating the progress and achievements of the proposed project meets the requirements of 34 CFR 500.50 through 500.52.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3291(a)(6), 3303)

Subpart D—How Does the Secretary Make an Award?

§ 526.30 What priorities may the Secretary establish?

(a) In any fiscal year, the Secretary may establish as priorities, one or more of the activities listed in § 526.10.

(b) The Secretary announces any priorities in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 3291(a)(6))

§ 526.31 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 526.32.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(b) The Secretary then applies the additional factors listed in 34 CFR 525.32.

(Authority: 20 U.S.C. 3291(a)(6))

§ 526.32 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Description and assessment of need.* (17 points) The Secretary reviews each application to determine—

(1) The extent to which the applicant has identified the needs of the special populations to be served, including the lack of proficiency of the LEP children in understanding, speaking, and, if appropriate, reading and writing in the English language;

(2) The reliability and objectivity of the means used to identify those needs, including—

(i) The criteria and other objective means used to identify the LEP children eligible to participate in the project; and

(ii) If applicable, the basis for differentiating between children whose language problems relate to limited English proficiency and those whose language problems relate to the child's handicap as identified in his or her individualized education program developed in accordance with EHA-B, and 34 CFR Part 300; and

(3) The extent to which the project will serve those most in need of services.

(b) *Program objectives and design.* (30 points) (1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's design for meeting the needs of LEP students to be served, including the extent to which the instructional approach to be used will address the specific needs identified in the application.

(2) The Secretary looks for the extent to which the project has specific and quantifiable objectives that will lead to the realization of the goals of the Act, including—

(i) The manner and time schedule by which the applicant will meet the needs of LEP children served by the project, including—

(A) The achievement of goals set for the children served by the project, especially the goal of achieving English language proficiency as soon as possible;

(B) The identification of children who have achieved proficiency in the English language adequate for their effective participation in the regular educational program;

(C) The transfer of these children identified in paragraph (b)(2)(i)(B) of this section to the regular educational program as quickly as possible;

(ii) The strategies for coordination with established instructional programs at the elementary and secondary level for LEP children in the schools operated or supported by LEAs in the community or communities to be served; and

(iii) The way the applicant plans to use its resources and personnel to achieve each objective.

(3) The Secretary reviews each application to determine the quality of the training plan for the project, including the extent to which the plan addresses the needs of personnel to be trained to meet the needs of LEP children to be taught by the personnel.

(c) *Commitment and capacity.* (20 points) The Secretary reviews each application to determine the applicant's commitment and capacity to continue, expand, and build upon the project when Federal assistance ends.

(d) *Evaluation plan.* (8 points) The Secretary reviews the strength of the evaluation plan and its relationship to the educational goals of the project and the activities conducted to attain those goals.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(Authority: 20 U.S.C. 3291(a)(6), 3303)

(e) *Quality of personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of the following personnel:

(i) The principal classroom instructional personnel.

(ii) The project director, if one is to be used, and other personnel essential to the success of the project.

(2) The Secretary considers—

(i) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(ii) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures the proper and efficient administration of the project, including evidence that administrative costs are a minimum proportion of the total costs of the project.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 1401-1420, 3291(a)(6))

[51 FR 22430, June 19, 1986, as amended at 53 FR 39221, Oct. 5, 1988]

§ 526.33 What is the length of the project period?

The Secretary approves a project period of three years.

(Authority: 20 U.S.C. 3291(b)(2))

[51 FR 22430, June 19, 1986, as amended at 53 FR 39222, Oct. 5, 1988]

Subpart E—What Conditions Must Be Met by a Recipient?

§ 526.40 What information must be given to parents?

A grantee shall inform parents or legal guardians of students identified for enrollment in the project of the information specified in 34 CFR 501.40.

(Approved by the Office of Management and Budget under control number 1885-0510)

(Authority: 20 U.S.C. 3283(c), 3291(d)(1)(D))

PART 537—BILINGUAL EDUCATION: PROGRAM FOR THE DEVELOPMENT OF INSTRUCTIONAL MATERIALS

Subpart A—General

Sec.

537.1 Program for the Development of Instructional Materials.
537.2 Who is eligible to apply for assistance under the Program for the Development of Instructional Materials?
537.3 What regulations apply to the Program for the Development of Instructional Materials?
537.4 What definitions apply to the Program for the Development of Instructional Materials?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

537.10 What activities are eligible for assistance?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

537.30 How does the Secretary evaluate an application?
537.31 What selection criteria does the Secretary use?
537.32 What is the length of a project period?

AUTHORITY: 20 U.S.C. 3221-3262, unless otherwise noted.

SOURCE: 51 FR 22433, June 19, 1986, unless otherwise noted.

Subpart A—General

§ 537.1 Program for the Development of Instructional Materials.

The Program for the Development of Instructional Materials provides assistance to establish, operate, and improve programs for the development of instructional materials in languages for which materials are commercially unavailable. These instructional materials must meet the needs of local educational agencies that offer instructional programs such as those authorized under Part A of the Act.

(Authority: 20 U.S.C. 3231(a)(7))

§ 537.2 Who is eligible to apply for assistance under the Program for the Development of Instructional Materials?

The following parties are eligible to apply under the part:

(a) State educational agencies (SEAs).

(b) Local educational agencies (LEAs).

(c) Institutions of higher education (IHEs).

(d) Private and public profit and nonprofit organizations.

(e) Individuals.

(Authority: 20 U.S.C. 3231(a)(7))

§ 537.3 What regulations apply to the Program for the Development of Instructional Materials?

The following regulations apply to this program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 537.

(Authority: 20 U.S.C. 3231(a)(7))

§ 537.4 What definitions apply to the Program for the Development of Instructional Materials?

The definitions in 34 CFR 500.4 apply to this program.

(Authority: 20 U.S.C. 3231(a)(7))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 537.10 What activities are eligible for assistance?

The Secretary provides assistance to develop instructional materials including testing materials for use in programs for limited English proficient persons.

(Authority: 20 U.S.C. 3231(a)(7))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 537.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 537.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for the complete criterion is indicated in parentheses after the heading for the criterion.

(b) The Secretary then applies the additional factors listed in 34 CFR 525.32.

(Authority: 20 U.S.C. 3231(a)(7))

§ 537.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (35 points) The Secretary reviews each application to determine the extent of the need for the materials, including—

(1) The method used to identify the need;

(2) The nature and magnitude of the need; and

(3) How the applicant determined that the materials are not commercially available.

(b) *Program objectives and design.* (30 points)

(1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's design for meeting the need

identified in the application, including how the instructional materials to be developed will meet that need.

(2) The Secretary looks for the extent to which the objectives of the project will lead to the realization of the goals of the Act, including—

(i) The goal of enabling LEP children to achieve English language proficiency;

(ii) The time schedule established to develop and test the instructional materials fully; and

(iii) The manner in which the applicant provides for the inclusion of staff of one or more LEAs in the development and testing of the instructional materials.

(c) *Quality of key personnel and applicant.* (15 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine personnel qualifications under paragraph (c)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(3) The Secretary also considers the applicant's experience in developing instructional materials.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures the proper and efficient administration of the project, including evidence that administrative costs are a minimum proportion of the total costs of the project.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3231(a)(7))

§ 537.32 What is the length of a project period?

The Secretary approves a project period of one to three years.

(Authority: 20 U.S.C. 3231(d)(3))

PART 538—TRANSITION PROGRAM FOR REFUGEE CHILDREN

Subpart A—General

Sec.

538.1 Transition Program for Refugee Children.
538.2 Who is eligible to apply for a grant under the Transition Program for Refugee Children?
538.3 What regulations apply?
538.4 What definitions apply?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

538.10 What activities are eligible for grant assistance under the program?

Sec.

Subpart C—How Does a State Apply for a Grant?

538.20 What documents does the State submit to receive a grant?

Subpart D—How Does the Secretary Make a Grant to a State?

538.30 How does the Secretary review an application submitted by an SEA?
538.31 What formula is used to determine the amount of a grant?

Subpart E—How Does a State Make a Subgrant to an Applicant?

538.40 For what purposes may an LEA apply for a subgrant?
538.41 How does the State determine the amount of a subgrant?

Subpart F—What Conditions Apply to a State and Its Subgrantees Under the Program?

538.50 What should a State do if an LEA does not apply for a subgrant?
538.51 What are the restrictions on costs under this program?
538.52 Under what circumstances may the Secretary arrange for providing services under this program?

AUTHORITY: 8 U.S.C. 1522 (a), (c), (d), unless otherwise noted.

SOURCE: 53 FR 52619, Dec. 28, 1988, unless otherwise noted.

Subpart A—General

§ 538.1 Transition Program for Refugee Children.

(a) The Transition Program for Refugee Children provides assistance to meet the special educational needs of eligible children who are enrolled in public and nonprofit private elementary and secondary schools.

(b) This program funds formula grants to States based on the number of eligible children in the States.

(Authority: 8 U.S.C. 1522 (a), (d))

§ 538.2 Who is eligible to apply for a grant under the Transition Program for Refugee Children?

(a) A State educational agency (SEA) is eligible to apply for a grant to assist eligible local educational agencies (LEAs) in its State in providing special educational services to eligible children, or to assist the SEA in providing those services pursuant to § 538.50, if the State has an approved plan for the administration of refugee resettlement programs in its State on file with the Director of the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS).

(b) Requirements pertaining to submission and approval of the State plan are contained in 45 CFR Part 400 (Refugee Resettlement Program; Plan and Reporting Requirements for States).

Authority: 8 U.S.C. 1522 (a), (c), (d))

§ 538.3 What regulations apply?

The following regulations apply to the Transition Program for Refugee Children:

(a) The regulations in 34 CFR Part 538.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs), Part 77 (Definitions That Apply To Department Regulations), Part 79 (Inter-governmental Review of Department of Education Programs and Activities), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements for State and Local Governments).

(Authority: 8 U.S.C. 1522(d))

§ 538.4 What definitions apply?

(a) *Definitions in EDGAR*. The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Elementary school
Nonprofit
Private
Secondary school
Secretary
State
State educational agency

(b) *Other Definitions*. The following definitions also apply to this part:

Act means the Immigration and Nationality Act as amended by the Refugee Act of 1980 (Pub. L. 96-212), 8 U.S.C. 1522(a), (c), (d).

Eligible children means children who—

(1)(i) Are admitted into the United States under section 207 of the Act;

(ii) Are granted asylum in the United States under section 208 of the Act;

(iii) Are paroled into the United States as a refugee or asylee under section 212(d)(5) of the Act; or

(iv) Are admitted for permanent residence in the United States, provided the individual child previously held a status in paragraph (1)(i), (ii), or (iii) of this definition;

(2) Are within the age limit for which the applicable State is required or permitted under State law to provide free public elementary and secondary school education for students; and

(3) Have been admitted into the United States for no more than two years at the elementary school level, or for no more than three years at the secondary school level, and who are enrolled in public or nonprofit private elementary or secondary schools.

Eligible local educational agency means—

(1) A public board of education or her public authority that will serve t least twenty eligible children who re enrolled in public or nonprofit private schools within the geographic rvice area under its jurisdiction and legally constituted within a State r either administrative control of or rection of, or to perform service nctions for, public elementary or condary schools in—

(i) A city, county, township, school strict, or other political subdivision a State; or

(ii) Such combination of school dis-cts or counties a State recognizes as administrative agency for its public mentary or secondary schools; or

(2) Any other public institution or ency that has administrative control d direction of a public elementary secondary school and serves a geo-phic area in which it will serve at st twenty eligible children enrolled public or nonprofit private schools.

thority: 8 U.S.C. 1522(a), (c), (d))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 538.10 What activities are eligible for grant assistance under the program?

(a) The following are examples of services that may be provided under this program:

(1) Special supplemental educational services may be provided, with emphasis on instruction to improve English language skills of eligible children, so as to enable those children to achieve and maintain a satisfactory level of academic performance. These services may include—

(i) Testing to determine the educational needs of eligible children;

(ii) Special English language instruction;

(iii) Bilingual education;

(iv) Remedial programs of instruction; and

(v) Special materials and supplies.

(2) Up to 15 percent of the award may be used to provide support services for the eligible children, including but not limited to—

(i) Inservice training for educational personnel to work with eligible children to enable them more effectively to provide services to those children;

(ii) Training for parents of eligible children to enable them to participate more effectively in the education of their children; and

(iii) School counseling and guidance services for eligible children, including referrals to appropriate social and health agencies.

(b) An SEA may use up to one percent of the total funds it receives—

(1) To ensure proper and efficient administration of funds under this program; and

(2) To provide technical assistance to subgrantees and others who are providing services under this program to eligible children.

(c) An eligible LEA may use up to one percent of the total funds it receives for the administration of the program. The remaining funds must be used for the activities under paragraph (a) of this section.

(d) Funds awarded under the program to any State must be used so as to supplement the level of State and local funds that, in the absence of those payments, would have been expended for special programs for eligible children, and in no case to supplant those State and local funds, except that nothing in this paragraph shall preclude a local educational agency from using funds under this part for activities carried out under an order of a court of the United States or of any State respecting services to be provided to eligible children because of their limited English proficiency, as defined in section 703(1) of the Bilingual Education Act (20 U.S.C. 3221 *et seq.*), or to carry out a plan approved by the Secretary as adequate under Title VI of the Civil Rights Act of 1964 with respect to those services for those children.

(Authority: 8 U.S.C. 1522(a), (d))

Subpart C—How Does a State Apply for a Grant?

§ 538.20 What documents does the State submit to receive a grant?

(a) An SEA shall submit to the Secretary an application containing the following:

(1) A narrative that demonstrates the need for assistance.

(2) A count of the number of eligible children to be served by the program.

(3) The date or dates on which the count was taken.

(4) A program plan that includes—

(i) A brief description of the SEA's method of counting children eligible for assistance under this program; and

(ii) A brief description of the SEA's plan for administering, monitoring, and evaluating the program; and

(iii) A brief description of how the SEA will provide services, if any, to eligible children pursuant to § 538.50.

(b) The Secretary may specify, in a notice published in the FEDERAL REGISTER, a period during which the State's count under paragraph (a)(2) of this section must be taken.

(OMB Approval No. 1885-0503)

(Authority: 8 U.S.C. 1522(a), (d))

Subpart D—How Does the Secretary Make a Grant to a State?

§ 538.30 How does the Secretary review a application submitted by an SEA?

The Secretary approves an application submitted by an SEA if the application complies with the requirement in this part.

(Authority: 8 U.S.C. 1522(a), (c), (d))

§ 538.31 What formula is used to determine the amount of a grant?

To determine the amount of a grant to an SEA, the Secretary—

(a) Determines the average per pupil allocation by dividing the total amount of the available funds for grants in a fiscal year by the sum of all eligible children to be served by eligible LEAs or pursuant to § 538.50 counted by SEAs with approved applications; and

(b) Multiplies an SEA's child count by the average per pupil allocation determined under paragraph (a) of this section.

(OMB Approval No. 1885-0503)

(Authority: 8 U.S.C. 1522(a), (d))

Subpart E—How Does a State Make a Subgrant to an Applicant?

§ 538.40 For what purposes may an LEA apply for a subgrant?

An eligible LEA may apply to the SEA for a subgrant to provide services to eligible children enrolled in public and nonprofit private schools within its jurisdiction.

(OMB Approval No. 1885-0503)

(Authority: 8 U.S.C. 1522(a), (d))

§ 538.41 How does the State determine the amount of a subgrant?

In determining the amount of a subgrant to an eligible LEA, the SEA—

(a) Divides the amount of funds available to serve eligible children by the total number of eligible children to be served in the State to determine the amount of funds available for each eligible child; and

(b) Multiplies an eligible LEA's count of eligible children the LEA will serve by the quotient obtained in paragraph (a) of this section.

(OMB Approval No. 1885-0503)

(Authority: 8 U.S.C. 1522(a), (d))

Subpart F—What Conditions Apply to a State and Its Subgrantees Under the Program?

§ 538.50 What should a State do if an LEA does not apply for a subgrant?

If an LEA does not apply for a subgrant to serve eligible children in either public or nonprofit private schools, or both, within its jurisdiction, the SEA may not include those children in its count of eligible children under § 538.20 of these regulations, unless the LEA has at least 20 eligible children in the geographic area it serves, and the SEA—

(a) Arranges through subgrants, contracts, or cooperative agreements with public and nonprofit agencies, organizations, or institutions (which may include institutions of higher education) for the provision of services to the eligible children who would not be served; or

(b) Provides services directly to those children.

(Authority: 8 U.S.C. 1522(a), (d))

§ 538.51 What are the restrictions on costs under this program?

Funds may not be used under this program for—

(a) Construction, repair, remodeling, or alteration of facilities or sites;

(b) Payments of stipends to participants in inservice training or other workshops, including costs of participant travel, meals or lodging associated with this training; or

(c) Payments for the provision of health or social services.

(Authority: 8 U.S.C. 1522(a), (d))

§ 538.52 Under what circumstances may the Secretary arrange for providing services under this program?

If a State is prohibited by law from providing educational services to children enrolled in nonprofit private elementary or secondary schools, or if the Secretary determines that an SEA or eligible LEA is unwilling or has substantially failed to provide educational services on an equitable basis to eligible children enrolled in nonprofit private schools, the Secretary may—

(a) Arrange for other means of providing services to these children; and

(b) Deduct the cost of providing these services, including any administrative costs, from the appropriate SEA grant allocation.

(Authority: 8 U.S.C. 1522(a), (d))

PART 548—BILINGUAL EDUCATION: STATE EDUCATIONAL AGENCY PROGRAM

Subpart A—General

Sec.

548.1 State Educational Agency Program.
548.2 Who is eligible to apply for assistance under the State Educational Agency Program?
548.3 What regulations apply to the State Educational Agency Program?
548.4 What definitions apply to the State Educational Agency Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

548.10 What activities are required under this program?
548.11 What additional activities may a State educational agency (SEA) provide under this program?

Subpart C—How Does an SEA Apply for an Award?

548.20 What must an SEA include in its application?

Subpart D—How Does the Secretary Make an Award?

548.30 How are funds distributed to an SEA?
548.31 How does the Secretary evaluate an application?
548.32 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Recipient?

548.40 What requirements apply to an SEA?

AUTHORITY: 20 U.S.C. 3281-3341, unless otherwise noted.

SOURCE: 54 FR 19489, May 5, 1989, unless otherwise noted.

Subpart A—General

§ 548.1 State Educational Agency Program.

The State Educational Agency Program provides financial assistance to State educational agencies (SEAs) to—

(a) Collect, aggregate, analyze, and publish data and information on the limited English proficient persons in their States and the educational services provided or available to those persons; and

(b) Carry out activities designed to improve the effectiveness of programs of bilingual education in their States, such as those assisted under Title VII.

(Authority: 20 U.S.C. 3302)

§ 548.2 Who is eligible to apply for assistance under the State Educational Agency Program?

An SEA is eligible to apply for assistance under this program.

(Authority: 20 U.S.C. 3302)

§ 548.3 What regulations apply to the State Educational Agency Program?

The following regulations apply to the State Educational Agency Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 548.

(Authority: 20 U.S.C. 3302)

§ 548.4 What definitions apply to the State Educational Agency Program?

The definitions in 34 CFR 500.4 apply to the State Educational Agency Program.

(Authority: 20 U.S.C. 3302)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 548.10 What activities are required under this program?

(a) An SEA that receives a grant under this program shall collect, aggregate, analyze, and publish data and information on the limited English proficient persons in the State and the educational services provided or available to those persons.

(b) The SEA shall report the data and information required to be collected under this section to the Secretary.

(c) The data and information collected under this section must include Statewide data and information described in section 7021(c)(2) (A)-(E) of the Act, and statewide data and information on educational services provided or available to LEP persons as required by section 7032(a) of the Act.

(d) An SEA shall submit to the Secretary the data and information required in paragraph (c) of this section, on or before the date established by the Secretary in the Federal Register.

(e) An SEA shall make the data and information reported to the Secretary available for publication and dissemination to the public, particularly to persons of limited English proficiency in the State.

(Approved by the Office of Management and Budget under control number 1885-0509)

(Authority: 20 U.S.C. 3302)

§ 548.11 What additional activities may a State educational agency (SEA) provide under this program?

(a) An SEA may propose any of the following additional activities:

(1) Planning and developing educational programs such as those assisted under Title VII.

(2) Reviewing and evaluating programs of bilingual education, including bilingual education programs that are not funded under Title VII.

(3) Providing, coordinating, or supervising technical and other forms of non-financial assistance to local educational agencies (LEAs), community organizations, and private elementary and secondary schools that serve limited English proficient persons.

(4) Developing and administering instruments and procedures for the assessment of the educational needs and competencies of limited English proficient persons.

(5) Training SEA and LEA staff to carry out the purposes of programs assisted under Title VII.

(6) Other activities and services designed to build the capacity of SEAs and LEAs to meet the educational

needs of limited English proficient persons.

(b) An SEA shall indicate its priorities for funding.

(Authority: 20 U.S.C. 3302)

Subpart C—How Does an SEA Apply for an Award?

§ 548.20 What must an SEA include in its application?

An SEA shall assure the Secretary in its application that it will work cooperatively with and coordinate efforts with the Multifunctional Resource Centers, the Bilingual Evaluation Assistance Centers, the National Clearinghouse for Bilingual Education, and other LEA technical assistance service providers in the State.

(Authority: 20 U.S.C. 3302)

Subpart D—How Does the Secretary Make an Award?

§ 548.30 How are funds distributed to an SEA?

(a) The Secretary may award to an SEA funds necessary for the proper and efficient conduct of a project under this program.

(b) The amount paid to an SEA for any fiscal year may not be less than $75,000 nor greater than 5 percent of the total amount paid to LEAs within the State under Part A of Title VII during the fiscal year preceding the year for which assistance is sought.

(c) In determining the amount of an award to an SEA the Secretary considers—

(1) The reasonableness of an SEA's proposed budget to carry out the activities required under § 548.10;

(2) The need for any of the additional activities proposed under § 548.11; and

(3) The total funds available for awards to SEAs under this program.

(Authority: 20 U.S.C. 3302)

§ 548.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria listed in § 548.32 in deciding whether to approve a program under section 7032.

(b) The Secretary awards a maximum of 100 points to evaluate the activities under § 548.10 and the additional activities an SEA may propose under § 548.11.

(c) The maximum possible score for each complete criterion is indicated in parentheses after the heading for each criterion.

(d) The Secretary awards a grant to each SEA that—

(1) Meets the applicable requirements in section 7032 and in this part; and

(2) Submits an application that achieves a score of at least 50 points under the selection criteria.

(e) The Secretary permits an SEA to modify and resubmit an application that has been disapproved under paragraph (d)(2) of this section.

(Authority: 20 U.S.C. 3302)

§ 548.32 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Plan of operation* (25 points). (1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purposes of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly;

(vi) The methods the SEA proposes to use to provide services; and

(vii) The SEA's plans to work cooperatively with and coordinate activities with other providers of technical assistance to avoid duplication of services to the LEAs in the State.

(b) *Capacity building* (25 points). The Secretary reviews each application for—

(1) A clear and concise plan for developing resources, including activities such as the training of SEA personnel, that will increase the capacity of the State to—

(i) Collect and analyze data necessary to identify and promote effective educational programs and practices for limited English proficient students; and

(ii) Carry out other activities assisted under this part, and

(2) The commitment of the State to incorporate and build the proposed activities into the State's overall ongoing programs designed to improve services to LEAs in the State.

(c) *Quality of key personnel* (25 points). (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) Participation of trained personnel in fields related to the objectives of the project;

(iv) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the activities of the project, as well as other evidence that the applicant provides.

(d) *Cost effectiveness* (10 points). The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective for the proposed activities under section 7032.

(e) *Evaluation plan* (10 points). (1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary considers—

(i) The method used to determine effectiveness of activities included in the SEA plan;

(ii) How the applicant determines the effect of the activities on LEA operations; and

(iii) Methods used to improve delivery of services to LEAs.

(f) *Adequacy of resources* (5 points). (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 20 U.S.C. 3302)

Subpart E—What Conditions Must Be Met by a Recipient?

§ 548.40 What requirements apply to an SEA?

An SEA shall use funds made available under this program to supplement and, to the extent practical, increase the level of funds that, in the absence of the grant, would have been made available by the State for activities required and authorized under this program. In no case may the funds made available under this program be used to supplant funds already being provided, or funds that would have been provided by the State for these activities.

(Authority: 20 U.S.C. 3302)

PART 561—BILINGUAL EDUCATION: EDUCATIONAL PERSONNEL TRAINING PROGRAM

Subpart A—General

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561.3 What regulations apply to the Educational Personnel Training Program?
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Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

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561.30 How does the Secretary evaluate an application?
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561.40 What additional requirement apply?
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AUTHORITY: 20 U.S.C. 3281-3341, unless otherwise noted).

SOURCE: 51 FR 22434, June 19, 1986, unless otherwise noted.

Subpart A—General

§ 561.1 Educational Personnel Training Program.

The Educational Personnel Training Program provides financial assistance to meet the needs for additional or better trained educational personnel (as defined in 34 CFR 500.4), for programs for limited English proficient persons. These projects may provide training for parents and educational personnel and must emphasize opportunities for career development, advancement, and lateral mobility.

(Authority: 20 U.S.C. 3321(a)(1))

§ 561.2 Who is eligible to apply for assistance under the Educational Personnel Training Program?

Institutions of higher education are eligible to apply for assistance under the Educational Personnel Training Program.

(Authority: 20 U.S.C. 3321(a)(1))

§ 561.3 What regulations apply to the Educational Personnel Training Program?

The following regulations apply to the Educational Personnel Training Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 561, except as provided in paragraph (c) of this section.

(c) The regulations in this Part 561 do not apply to second- and third-year noncompeting continuation grants in FY 1989 and third-year noncompeting continuation grants in FY 1990. The regulations applicable to these noncompeting continuation grants are the regulations applicable in FY 1988.

(Authority: 20 U.S.C. 3321(a)(1))

[51 FR 22434, June 19, 1986, as amended at 53 FR 39222, Oct. 5, 1988]

§ 561.4 What definitions apply to the Educational Personnel Training Program?

The following definitions apply to the Educational Personnel Training Program:

(a) The definitions in 34 CFR 500.4.

(b) "Preservice training" means training for educational personnel preparing to participate in programs for limited English proficient persons.

(Authority: 20 U.S.C. 3321(a)(1))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 561.10 What activities are eligible for assistance?

The Secretary provides assistance under this program for projects that provide training necessary to prepare educational personnel and parents to meet the ongoing needs of the limited English proficient (LEP) children that they will be serving. Assistance may be provided to degree and non-degree programs designed to assist educational personnel in meeting State and local certification requirements.

(Authority: 20 U.S.C. 3321(a)(1))

[51 FR 22434, June 19, 1986, as amended at 53 FR 39222, Oct. 5, 1988]

Subpart C—How Does One Apply for an Award?

§ 561.20 What requirements pertain to the application advisory council and advisory committee?

An applicant for an award under this program shall develop its application in consultation with an advisory council composed of representatives of SEAs and LEAs within the applicant's service area or geographic region that operate programs for limited English proficient persons.

(Authority: 20 U.S.C. 3321(c))

[53 FR 39223, Oct. 5, 1988]

Subpart D—How Does the Secretary Make an Award?

§ 561.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 561.31.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(b) The Secretary then applies the additional factors in § 561.32.

(Authority: 20 U.S.C. 3321(a)(1))

§ 561.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Need and impact.* (27 points) The Secretary reviews each application to determine—

(1) The extent to which the applicant has specifically identified needs to be addressed by the project for additional or better trained educational personnel to serve LEP students in the community, geographical region, or Nation; and

(2) The extent to which the methods used by the applicant to identify those needs are reliable and objective.

(b) *Program objectives and design.* (25 points) (1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's proposal for meeting the needs identified in its application, including—

(i) The extent to which those needs will be met by the project;

(ii) How rapidly those needs will be met by the project;

(iii) The appropriateness of the curriculum for meeting those needs; and

(iv) The extent and quality of practice teaching or other clinical experience—

(A) In the geographic area(s) where those needs have been identified; and

(B) In the substantive subject(s) for which the project will train personnel.

(2) The Secretary considers the extent to which a project designed to include preservice training contains coursework in—

(i) Teaching English as a second language;

(ii) Use of a non-English language for instructional purposes;

(iii) Linguistics;

(iv) Evaluation and assessment; and

(v) Involvement of parents in the educational process.

(3) The Secretary considers how well the specific project objectives will realize the goals of the Act. The Secretary considers the extent to which—

(i) The training objectives are—

(A) Clear and specific;

(B) Measurable; and

(C) Attainable within the proposed timeframe;

(ii) The training design is appropriate for the proposed objectives and participants;

(iii) The project will prepare teachers to teach English to LEP students;

(iv) The applicant proposes to use its resources and personnel to achieve each objective; and

(v) The project will provide opportunities for career development, advancement, and lateral mobility for participants in order to meet the changing needs of the LEP population to be served.

(Authority: 20 U.S.C. 3254(a), 3251(d))

(c) *Coordination.* (10 points) (1) The Secretary reviews each application to determine the applicant's plans to coordinate project activities with related projects, including other activities funded under the Act.

(2) The Secretary considers the extent to which the applicant will coordinate the project with—

(i) Other related degree and nondegree programs and course of study at the IHE; and

(ii) SEAs, LEAs, and IHEs in—

(A) The geographic area(s) in which
here is a need for personnel; and

(B) The substantive subject(s) for
hich the project will train personnel.

(3) The Secretary also considers
hether the project will complement
nd not duplicate other activities
unded under the Act.

(d) *Commitment and capacity.* (10
oints) The Secretary reviews each ap-
lication to determine the applicant's
ommitment to the project and capac-
y to continue, expand, and build
oon the project when Federal assist-
ce under this part ends.

(e) *Quality of key personnel.* (15
ints) (1) The Secretary reviews each
plication to determine the quality of
e key personnel the applicant plans
use on the project, including—

i) The qualifications of the project
rector (if one is to be used);

ii) The qualifications of each of the
her key personnel to be used in the
oject;

iii) The time that each person re-
red to in paragraphs (e)(1) (i) and
of this section will commit to the
oject; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures proper and efficient administration of the project including evidence that administrative costs are a minimum proportion of the project's total costs.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable, including—

(i) Data on numbers of participants;

(ii) Data on placement of participants;

(iii) Evidence of participants' success in serving LEP children in accordance with the needs identified in the application; and

(iv) Evidence that the project has developed the grantee's capacity as described in paragraph (d) of this section.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3321(a)(1), (d))

§ 561.32 What additional factors does the Secretary consider?

(a) In addition to the points awarded under § 561.31, the Secretary considers the following factors which demonstrate the applicant's competence and experience in programs and activities such as those authorized under the Act:

(1) Job placement and development.

(2) Evidence of prior participant's success in serving LEP children in accordance with the needs identified in the prior project.

(3) Evidence of demonstrated capacity and cost effectiveness as described in § 561.31(d) and (f).

(b) The Secretary distributes an additional 10 points among the factors listed in paragraph (a) of this section. The Secretary indicates in the application notice published in the FEDERAL REGISTER how these 10 points are distributed.

(Authority: 20 U.S.C. 3324)

Subpart E—What Conditions Must Be Met by a Recipient?

§ 561.40 What additional requirements apply?

(a) Programs must be designed to assist educational personnel in meeting State and local certification requirements, and, whenever possible, should award college or university credit.

(b) Programs that include preservice training must be designed to ensure that participants become proficient in English and a second language of instruction.

(Authority: 20 U.S.C. 3321(d))

[51 FR 22434, June 19, 1986, as amended at 53 FR 39223, Oct. 5, 1988]

§ 561.41 What financial assistance to participants is allowable under this program?

(a) The Secretary may authorize a grantee to provide the following financial assistance to participants:

(1) Tuition and fees—the normal and usual costs associated with the course of study.

(2) Books—up to $250.

(3) Travel—up to $250 for travel related to practice teaching or clinical experience.

(4) Up to a maximum stipend of $325 per month, including allowances for subsistence and other expenses for a participant and his or her dependents, if the participant is—

(i) A full-time student in a program of study that was in the approved application; and

(ii) Gainfully employed no more than 20 hours a week or the annual equivalent of 1040 hours.

(b) In authorizing assistance to participants under paragraph (a) of this section, the Secretary considers the amount of other financial compensation that the participants receive during the training period.

(Authority: 20 U.S.C. 3325)

PART 562—BILINGUAL EDUCATION: FELLOWSHIP PROGRAM

Subpart A—General

Sec.

562.1 Fellowship Program.
562.2 Who is eligible to apply for assistance under the Fellowship Program?
562.3 What regulations apply to the Fellowship Program?
562.4 What definitions apply to the Fellowship Program?
562.5 What does a fellowship award include?

Subpart B—How Does an Institution of Higher Education (IHE) Obtain Approval of Its Application for Participation?

562.10 How does the Secretary approve IHEs for participation?
562.11 What criteria does the Secretary use in reviewing applications for participation?

Subpart C—How Does an Individual Apply for a Fellowship?

562.20 Where does an individual apply?

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Subpart D—How does the Secretary Select New Fellows?

562.30 How does the Secretary select new Fellows?
562.31 What is the period of a fellowship?

Subpart E—What Conditions Must be Met by Fellows?

562.40 What is the service requirement for a fellowship?
562.41 What are the requirements for repayment of the fellowship?
562.42 What is the repayment schedule?
562.43 What interest is charged?
562.44 Under what circumstances is repayment deferred?
562.45 What is the length of the deferment of repayment?
562.46 Under what circumstances is repayment waived?
562.47 How shall the recipient account for his or her obligation?

Authority: 20 U.S.C. 3281-3341, unless otherwise noted.

Source: 53 FR 21401, June 7, 1988, unless otherwise noted.

Subpart A—General

§ 562.1 Fellowship Program.

The Fellowship Program provides financial assistance to full-time students who are in pursuit of a degree above the bachelor's level in areas related to programs for limited English proficient persons (as defined in 34 CFR 500.3) such as teacher training, program administration, research and evaluation, and curriculum development.

(Authority: 20 U.S.C. 3321, 3323)

§ 562.2 Who is eligible to apply for assistance under the Fellowship Program?

(a) An institution of higher education (IHE) that offers a program of study leading to a degree above the achelor's level as described in § 562.1 may apply for participation in the Felowship Program.

(b) An individual is eligible to apply or a fellowship under this program if he individual—

(1)(i) Is a citizen, a national, or a ermanent resident of the United tates:

(ii) Is in the United States for other han a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident; or

(iii) Is a permanent resident of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territories of the Pacific Islands (Republic of Palau); and

(2) Has been accepted for enrollment as a full-time student in a course of study offered by an IHE approved for participation in the program.

(Authority: 20 U.S.C. 3323)

[53 FR 21401, June 7, 1988; 53 FR 24937, July 1, 1988]

§ 562.3 What regulations apply to the Fellowship Program?

The following regulations apply to the Fellowship Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 562.

(Authority: 20 U.S.C. 3323)

§ 562.4 What definitions apply to the Fellowship Program?

The definitions in 34 CFR 500.4 apply to awards made subsequent to Fiscal Year 1985.

(Authority: 20 U.S.C. 3281-3341)

§ 562.5 What does a fellowship award include?

(a) *Allowable costs.* A student may use Fellowship funds under the program for—

(1) Tuition and fees—the normal and usual costs associated with the course of study;

(2) Books—up to $250;

(3) Travel—up to $250 for travel to field-study site; and

(4) A stipend, subject to the restrictions in paragraph (b) of this section.

(b) *Stipends.* (1) An individual may receive a Fellowship stipend if he or she is—

(i) A full-time student in a program of study which was approved by the Secretary in accordance with § 562.10; and

(ii) Not gainfully employed more than 20 hours a week or the annual equivalent.

(2) A stipend for an individual participating in the Fellowship Program may not exceed $450 per month.

(Authority: 20 U.S.C. 3325)

Subpart B—How Does an Institution of Higher Education (IHE) Obtain Approval of Its Application for Participation?

§ 562.10 How does the Secretary approve IHEs for participation?

(a)(1) The Secretary determines whether to approve an IHE for participation with regard to each proposed language curriculum based on the quality of the application using the criteria listed in § 562.11.

(2) The Secretary awards up to a maximum of 100 points for all the criteria.

(3) The maximum possible score for each criterion is indicated in parentheses following the heading for each criterion.

(b) After the IHE's application has been evaluated according to the selection criteria, the Secretary rank orders the application.

(c) Following the rank order, the Secretary then designates the maximum number of fellowships by language curriculum that may be awarded at each IHE—

(1) Based on the IHE's capacity to provide graduate training in the areas proposed for fellowship recipients; and

(2) To the extent feasible, in proportion to the needs of various groups of individuals with limited English proficiency within the geographic area.

(Approved by the Office of Management and Budget under control number 1885-0001)

(Authority: 20 U.S.C. 3323, 3324)

§ 562.11 What criteria does the Secretary use in reviewing applications for participation?

(a) *Institutional commitment.* (25 points)

(1) The Secretary reviews each application to determine the quality of the IHE's graduate program of study.

(2) The Secretary considers—

(i) The extent to which the program has been adopted as a permanent graduate program of study;

(ii) The organizational placement o the program;

(iii) The staff and resources which the IHE has committed to the program; and

(iv) The IHE's demonstrated competence and experience in programs and activities such as those authorized under the Act.

(b) *Quality of faculty members.* (2 points)

(1) The Secretary reviews each application to determine the qualifications of the faculty in the academic area.

(2) The Secretary considers the extent to which the background, education, research interests, and relevant experience of the faculty qualify them to plan and implement a successful program of high academic quality.

(c) *Quality of the instructional program.* (20 points)

(1) The Secretary considers the quality of the applicant's program of instruction.

(2) The Secretary considers—

(i) In the case of projects designed to prepare educational personnel for programs for limited English proficient persons that use English and a language other than English, the project incorporates the use of both English and a language other than English, to the extent necessary to develop the participants' competencies as bilingual education personnel;

(ii) The quality of the standards used to determine satisfactory progress in and completion of the program; and

(iii) The interdisciplinary aspects of the program.

(d) *Field based experience.* (15 points)

The Secretary reviews each application to determine the extent to which the program provides field based experience through arrangements with local educational agencies (LEAs), State educational agencies (SEAs) and persons or organizations with expertise in programs for limited English proficient persons.

(e) *Evidence of local or national need.* (10 points)

The Secretary reviews each application to determine the need for more individuals trained above the bachelor's level in proportion to the needs of various groups of individuals with limited English proficiency in the local area, and throughout the country.

(f) *Recruitment plan.* (10 points)

The Secretary considers the IHE's plans for recruiting and selecting nominees using the criteria listed in § 562.30 (b) and (c).

(Approved by the Office of Management and Budget under control number 1885-0001)

(Authority: 20 U.S.C. 3323)

Subpart C—How Does An Individual Apply for a Fellowship?

§ 562.20 Where does an individual apply?

(a) An individual shall submit an application for a fellowship to a participating IHE.

(b) Each participating IHE may establish procedures for receipt of applications from individuals.

(Authority 20 U.S.C. 3323)

Subpart D—How Does the Secretary Select New Fellows?

§ 562.30 How does the Secretary select new Fellows?

(a) The Secretary selects Fellows taking into consideration the rank orders prepared by the IHE, subject to the maximum number of fellowships per language curriculum designated for that IHE.

(b) The Secretary gives preference to individuals intending to study programs for limited English proficient persons in the following specialized areas:

(1) Vocational education.

(2) Adult education.

(3) Gifted and talented education.

(4) Special education.

(5) Education technology.

(6) Literacy.

(7) Mathematics and science education.

(c) In recommending nominees, an IHE shall consider the following criteria:

(1) *Academic record.* The quality of the academic record of the applicant.

(2) *Language proficiency.* The applicant's proficiency in English and, if applicable, the language(s) to be studied.

(3) *Experience.* The extent of the applicant's experience in providing services to, teaching in, or administering programs for limited English proficient persons.

(Approved by the Office of Management and Budget under control number 1885-0001)

(Authority: 20 U.S.C. 3323)

§ 562.31 What is the period of a fellowship?

(a) Except as provided in paragraph (b) of this section—

(1) Fellowships may be awarded for a maximum of two one-year periods to a student who maintains satisfactory progress in a post-baccalaureate program of study; and

(2) Fellowships may be awarded for a maximum of three one-year periods to a student who maintains satisfactory progress in a doctoral program of study.

(b) Subject to the availability of funds and where adequate justification is provided by an IHE, the Secretary may extend a fellowship beyond the maximum period to a recipient who, for circumstances beyond his or her control, is not able to complete the program of study in that period.

(c) A recipient of a fellowship who seeks assistance beyond the initial one-year period must be renominated by the participating IHE.

(d) The Secretary may give preference to recipients in their second or third year who maintain satisfactory progress in the program of study prior to approving nominations of new students.

(Authority: 20 U.S.C. 3323)

Subpart E—What Conditions Must Be Met by Fellows?

§ 562.40 What is the service requirement for a fellowship?

(a) Upon selection for a fellowship, the recipient shall sign an agreement provided by the Secretary to work for a period equivalent to the period of time that the recipient receives assistance under the fellowship in one or more of the following activities:

(1) Training personnel to develop and conduct programs for limited English proficient persons or teacher training programs at IHEs.

(2) Conducting research related to programs for limited English proficient persons.

(3) Administering programs for limited English proficient persons.

(4) Conducting evaluations of programs for limited English proficient persons.

(5) Developing curriculum materials designed for programs for limited English proficient persons.

(6) Working in any other activity, approved in advance by the Secretary, in accordance with the procedures in § 562.47, which is related to programs and activities such as those authorized under the Act.

(b) A recipient shall begin working in one or more of the activities listed in paragraphs (a) (1) through (6) of this section within six months of the date the recipient ceases to be enrolled at an IHE as a full-time student.

(Authority: 20 U.S.C. 3323(b))

§ 562.41 What are the requirements for repayment of the fellowship?

(a) If a recipient does not work in one of the activities described in § 562.40(a) (1) through (6), he or she shall repay the full amount of the fellowship.

(b) The Secretary prorates the amount a recipient is required to repay based on the length of time the recipient worked in an authorized activity compared with the length of time during which he or she received assistance.

(Authority: 20 U.S.C. 3323(b))

§ 562.42 What is the repayment schedule?

(a) A recipient required to repay all or part of the amount of the fellowship shall—

(1) Begin repayments within six months of the date he or she ceases to be enrolled as a full-time student at an IHE in the Fellowship Program; or

(2) Begin repayments on a date and in a manner established by the Secretary, if he or she ceases to work in an authorized activity, of the prorated amount of his or her obligation.

(b) A recipient must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary. This period may be extended if the Secretary grants a deferment under § 562.44.

(Authority: 20 U.S.C. 3323(b))

§ 562.43 What interest is charged?

(a) The Secretary charges a recipient interest on the unpaid balance owed by the recipient in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 562.44.

(Authority: 20 U.S.C. 3323(b))

§ 562.44 Under what circumstances is repayment deferred?

The Secretary may defer repayment if the recipient—

(a) Suffers from a serious physical or mental disability that prevents or substantially impairs the recipient's employability in one of the activities described in § 562.40(a)(1) through (6);

(b) Demonstrates to the Secretary's satisfaction that he or she is conscientiously seeking but unable to secure employment in one of the activities described in § 562.40(a)(1) through (6);

(c) Re-enrolls as a full-time student at an IHE;

(d) Is a member of the Armed Forces of the United States on active duty;

(e) Is in service as a volunteer under the Peace Corps Act; or

(f) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 3323(b))

§ 562.45 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a recipient shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

Authority: 20 U.S.C. 3323(b))

§562.46 Under what circumstances is repayment waived?

The Secretary may waive repayment f the recipient demonstrates the ex-stence of extraordinary circumstances hat justify a waiver.

Authority: 20 U.S.C. 3323(b))

§562.47 How shall the recipient account for his or her obligation?

(a) Within six months of the date a ecipient ceases to be enrolled as a ull-time student at an IHE, the recipi-nt shall submit to the Secretary one f the following items:

(1) A description of the employment n an activity listed in § 562.40(a)(1) hrough (6) in which he or she is em-loyed.

(2) Repayment required under § 562.41 and 562.42.

(3) A request to repay the obligation n installments.

(4) A request for a deferment or aiver as described in §§ 562.44 hrough 562.46 accompanied by a atement of justification.

(b) A recipient who submits a de-cription of employment under para-raph (a)(1) of this section shall notify he Secretary on a yearly basis of the eriod of time during the preceding ear that he or she was employed in he activity.

(c) A recipient shall inform the Sec-etary of any change in his or her em-loyment status.

(d) A recipient shall inform the Sec-etary of any change in his or her ad-ress.

(e) A recipient's failure to timely sat-fy the requirements in paragraphs) and (d) of this section shall result the recipient being in non-compli-ce or default status subject to col-ction action. Interest and costs of llection may be collected in accord-ce with 31 U.S.C. 3717 and 34 CFR rt 30.

pproved by the Office of Management d Budget under control number 1885-01)

uthority: 20 U.S.C. 3323(b))

PART 573—BILINGUAL EDUCATION: TRAINING DEVELOPMENT AND IMPROVEMENT PROGRAM

Subpart A—General

Sec.

573.1 Training Development and Improvement Program.
573.2 Who is eligible to apply for assistance under the Training Development and Improvement Program?
573.3 What regulations apply to the Training Development and Improvement Program?
573.4 What definitions apply to the Training Development and Improvement Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

573.10 What activities are eligible for assistance?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

573.30 How does the Secretary evaluate an application?
573.31 What selection criteria does the Secretary use?

Subpart E—[Reserved]

AUTHORITY: 20 U.S.C. 3281-3341, unless otherwise noted)

SOURCE: 51 FR 22436, June 19, 1986, unless otherwise noted.

Subpart A—General

§ 573.1 Training Development and Improvement Program.

The Training Development and Improvement Program provides financial assistance to encourage reform, innovation, and improvement in higher education programs related to programs for limited English proficient persons.

(Authority: 20 U.S.C. 3321(a)(3))

§ 573.2 Who is eligible to apply for assistance under the Training Development and Improvement Program?

Institutions of higher education (IHEs) are eligible to apply for assistance under the Training Development and Improvement Program.

(Authority: 20 U.S.C. 3321(b)(1))

§ 573.3 What regulations apply to the Training Development and Improvement Program?

The following regulations apply to the Training Development and Improvement Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 573, except as provided in paragraph (c) of this section.

(c) The regulations in this Part 573 do not apply to second- and third-year noncompeting continuation grants in fiscal year (FY) 1989 and third-year noncompeting continuation grants in FY 1990. The regulations applicable to these noncompeting continuation grants are the regulations applicable in FY 1988.

(Authority: 20 U.S.C. 3321(a) (3))

[51 FR 22436, June 19, 1986, as amended at 53 FR 39223, Oct. 5, 1988]

§ 573.4 What definitions apply to the Training Development and Improvement Program?

The definitions in 34 CFR 500.4 apply to the Training Development and Improvement Program.

(Authority: 20 U.S.C. 3321(a)(3))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 573.10 What activities are eligible for assistance?

The Secretary provides assistance for activities related to programs for limited English proficient persons which encourage reform, innovation, and improvement in—

(a) Applicable education curricula in graduate education;

(b) The structure of the academic profession; and

(c) The recruitment and retention of higher education and graduate school facilities.

(Authority: 20 U.S.C. 3321(a)(2))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 573.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria listed in § 573.31.

(b) The Secretary awards a maximum of 100 points for all the criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(Authority: 20 U.S.C. 3321(a)(3))

§ 573.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Need and impact.* (30 Points) (1) The Secretary reviews each application to determine—

(i) The extent to which there are specifically identified needs for the project; and

(ii) The extent to which the methods used by the applicant to identify those needs are reliable and objective.

(2) The Secretary also considers the extent to which—

(i) The project's objectives will assist in achieving the goals of the Act; and

(ii) The applicant proposes to use its resources and personnel to achieve each objective.

(b) *Program development and improvement.* (30 points) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's proposal for meeting the needs identified in the application including—

(1) The extent to which those needs will be met by the project;

(2) How rapidly those needs will be met;

(3) The courses, curriculum, or any applicable clinical training to be developed or revised; and

(4) The applicant's plan to recruit and retain qualified faculty members for the training program to be improved or reformed.

(c) *Coordination.* (10 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to coordinate project activities with related projects, including projects funded under the Act.

(2) The Secretary considers how the applicant will coordinate the project with—

(i) Other related programs and disciplines at the IHE; and

(ii) SEAs, LEAs, and IHEs in—

(A) The geographic area(s) in which there is a need for personnel; and

(B) The substantive subject(s) for which the project will train personnel.

(3) The Secretary also considers the extent to which the project will complement and not duplicate other activities funded under the Act.

(d) *Commitment and capacity.* (10 points) The Secretary reviews each application to determine—

(1) The applicant's commitment and capacity to continue, expand, and build upon the project when Federal assistance under this part ends; and

(2) The extent to which the applicant demonstrates competence and experience in programs and activities such as those authorized under the Act, particularly in training activities directly related to the objectives of the project.

(e) *Quality of key personnel.* (7 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine personnel qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures proper and efficient administration of the project, including evidence that administrative costs constitute a minimum proportion of the total costs of the project.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3321(a)(3))

Subpart E—[Reserved]

PART 574—BILINGUAL EDUCATION: SHORT-TERM TRAINING PROGRAM

Subpart A—General

Sec.

574.1 Short-Term Training Program.
574.2 Who is eligible to apply for assistance under the Short-Term Training Program?
574.3 What regulations apply to the Short-Term Training Program?
574.4 What definitions apply to the Short-Term Training Program?

Sec.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

574.10 What activities are eligible for assistance?

Subpart C—How Does One Apply for an Award?

574.20 What requirements pertain to consultation?

Subpart D—How Does the Secretary Make an Award?

574.30 What priorities may the Secretary establish?
574.31 How does the Secretary evaluate an application?
574.32 What selection criteria does the Secretary use?
574.33 What additional factors does the Secretary consider?

Subpart E—What Conditions Must Be Met by a Recipient?

574.40 What financial assistance to participants is allowable under this program?

Authority: 20 U.S.C. 3281-3341, unless otherwise noted.

Source: 51 FR 22437, June 19, 1986, unless otherwise noted.

Subpart A—General

§ 574.1 Short-Term Training Program.

The Short-Term Training Program provides financial assistance to improve the skills of educational personnel and parents participating in programs for limited English proficient persons.

(Authority: 20 U.S.C. 3321(a)(4))

§ 574.2 Who is eligible to apply for assistance under the Short-Term Training Program?

The following parties are eligible to apply for assistance under the Short-Term Training Program:

(a) Local educational agencies (LEAs).

(b) State educational agencies (SEAs).

(c) Institutions of higher education (IHEs), including junior or community colleges, and private for-profit or nonprofit organizations, which apply—

(1) After consultation with one or more LEAs or SEAs; or

(2) Jointly with one or more LEAs o SEAs.

(Authority: 20 U.S.C. 3321(b)(2))

§ 574.3 What regulations apply to th Short-Term Training Program?

The following regulations apply t the Short-Term Training Program:

(a) The regulations identified in 3 CFR 500.3.

(b) The regulations in this Part 574 except as provided in paragraph (c) o this section.

(c) The regulations in this Part 57 do not apply to second- and third-yea noncompeting continuation grants i fiscal year (FY) 1989 and third-yea noncompeting continuation grants i FY 1990. The regulations applicable t these noncompeting continuatio grants are the regulations applicabl in FY 1988.

(Authority 20 U.S.C. 3321(a)(4))

[51 FR 22437, June 19, 1986, as amended a 53 FR 39223, Oct. 5, 1988]

§ 574.4 What definitions apply to th Short-Term Training Program?

The following definitions apply t the Short-Term Training Program:

(a) The definitions in 34 CFR 500.4

(b) "Consultation" means engaging in discussions with appropriate persons representing entities to be served by the proposed project to determine needs, and providing opportunities for those persons to contribute to the development, operation, and evaluation of the proposed project.

(Authority: 20 U.S.C. 3283, 3321(a)(4))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 574.10 What activities are eligible for assistance?

The Secretary provides assistance for the following activities:

(a) Training designed to improve the instructional competence of teachers in carrying out their responsibilities in programs for limited English proficient persons.

(b) Training designed to improve the skills of educational personnel other than teachers, in carrying out their responsibilities in programs for limited English proficient persons.

(c) Training designed to improve the skills of parents in carrying out their responsibilities in programs for limited English proficient persons.

(Authority: 20 U.S.C. 3321(a)(4))

Subpart C—How Does One Apply for an Award?

§ 574.20 What requirements pertain to consultation?

An IHE or a private for-profit or nonprofit organization, which applies after consultation with one or more LEAs or SEAs, shall certify in its application that the consultation took place during the development of the proposed project and that the consultation will continue during the project period.

(Authority: 20 U.S.C. 3321(b)(2))

Subpart D—How Does the Secretary Make an Award?

§ 574.30 What priorities may the Secretary establish?

(a) The Secretary may annually establish, as a priority, one or more of the activities listed in § 574.10.

(b) The Secretary announces any annual priorities in a notice published in the Federal Register.

(Authority: 20 U.S.C. 3321(a)(4))

§ 574.31 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application on the basis of the criteria listed in § 574.32.

(2) The Secretary awards a maximum of 100 points for all the criteria.

(3) The maximum possible score for each complete criterion is indicated in parentheses following the heading for the criterion.

(b) The Secretary then applies the additional factors in § 574.33.

(Authority: 20 U.S.C. 3321(a)(4))

§ 574.32 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Need.* (27 points) The Secretary reviews each application to determine—

(1) The extent to which there are specifically identified needs to be addressed by the project for the improvement of the skills of educational personnel and parents participating in programs for limited English proficient persons; and

(2) The extent to which the methods used by the applicant to identify those needs are reliable and objective.

(b) *Program objectives and design:* (25 points) (1) The Secretary reviews each application to determine the appropriateness and reasonableness of the applicant's proposal for meeting the needs identified in the application, including—

(i) The extent to which those needs will be met by the project;

(ii) How rapidly those needs will be met by the project; and

(iii) Whether an appropriate curriculum is proposed for meeting those needs.

(2) The Secretary also considers how well the specific project objectives will lead toward the realization of the goals of the Act, including consideration of the extent to which—

(i) The training objectives are—

(A) Clear and specific;

(B) Measurable; and

(C) Attainable within the proposed timeframe;

(ii) The training design is appropriate for the proposed objectives and participants;

(iii) The project is designed to train participants to teach English to LEP children; and

(iv) The applicant proposes to use its resources and personnel to achieve each objective.

(Authority: 20 U.S.C. 3321(e), 3324)

(c) *Coordination.* (10 points) (1) The Secretary reviews each application to determine the applicant's plans to coordinate project activities with related projects, including other activities funded under the Act.

(2) The Secretary considers—

(i) How the applicant will coordinate the project with SEAs, LEAs, and IHEs in—

(A) The geographic area(s) in which there is a need for personnel; and

(B) The substantive subject(s) for which the project will train personnel; and

(ii) The extent to which the project will complement and not duplicate other activities funded under the Act.

(d) *Commitment and capacity.* (10 points) The Secretary reviews each application to determine the applicant's commitment to the project and capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(e) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(2) To determine personnel qualifications under paragraph (e)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(f) *Budget and cost effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) There is an effective plan of management that ensures proper and efficient administration of the project, including evidence that administrative costs constitute a minimum proportion of the total costs of the project.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective, and produce data that are quantifiable, including—

(i) Data on numbers of participants;

(ii) Evidence that participants' performance successfully addresses the needs identified in the application; and

(iii) Evidence that the project has developed the grantee's capacity as described in paragraph (d) of this section.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(Approved by the Office of Management and Budget under control number 1885-0003)

(Authority: 20 U.S.C. 3321(a)(4))

[51 FR 22437, June 19, 1986]

§ 574.33 What additional factors does the Secretary consider?

(a) In addition to the points awarded under § 574.32, the Secretary considers the following factors which demonstrate the applicant's competence and experience in programs and activities such as those authorized under the Act:

(1) Evidence of prior participants' success in serving LEP children in accordance with needs identified in the prior project.

(2) Evidence of demonstrated capacity and cost effectiveness as provided in § 574.32 (d) and (f).

(b) The Secretary distributes an additional 10 points among the factors listed in paragraph (a) of this section.

The Secretary indicates in the application notice published in the FEDERAL REGISTER how these 10 points are distributed.

(Authority: 20 U.S.C. 3321(a)(4), 3324)

Subpart E—What Conditions Must Be Met by a Recipient?

§ 574.40 What financial assistance to participants is allowable under this program?

(a) The Secretary may authorize a grantee to provide the following financial assistance to participants:

(1) Up to $250 for travel directly related to the individual's participation in the short-term training.

(2) Up to $325 per month for costs including allowances for subsistence and other expenses for a participant and his or her dependents.

(b)(1) A grantee may provide financial assistance to an individual participating in short-term training only to the extent necessary to allow the individual to participate in the training.

(2) In authorizing assistance to participants under paragraph (a) of this section, the Secretary considers the amount of other financial compensation that the participants receive during the short-term training period.

(Authority: 20 U.S.C. 3325)

PART 581—EMERGENCY IMMIGRANT EDUCATION PROGRAM

Subpart A—General

Sec.
581.1 What is the Emergency Immigrant Education Program?
581.2 Who is eligible to apply for a grant under the Emergency Immigrant Education Program?
581.3 What regulations apply to the Emergency Immigrant Education Program?
581.4 What definitions apply to the Emergency Immigrant Education Program?

Subpart B—How Does a State Apply for a Grant?

581.10 What assurances must a State submit to recieve a grant?
581.11 What counts must an SEA provide?

Sec.

Subpart C—How Does the Secretary Make a Grant to a State?

581.20 How does the Secretary determine the amount of award to a State?

Subpart D—[Reserved]

Subpart E—How Does a State Make a Subgrant to an Applicant?

581.40 How does a State determine the amount of a subgrant to an LEA?

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

581.50 How may funds be used under this program?
581.51 How is the eligibility of an immigrant child determined?
581.52 What requirements pertain to the participation of immigrant children in elementary and secondary nonpublic schools?
581.53 When does the Secretary implement a bypass?
581.54 What notice does the Secretary give?
581.55 What bypass procedures does the Secretary follow?
581.56 What are the functions of a hearing officer?
581.57 What are the hearing procedures?
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Subpart G—What Compliance Procedures Are Used by the Department of Education?

581.60 Under what conditions does the Secretary withhold funds?

AUTHORITY: 20 U.S.C. 3122-3130, unless otherwise noted.

SOURCE: 50 FR 32564, Aug. 13, 1985, unless otherwise noted.

Subpart A—General

§ 581.1 What is the Emergency Immigrant Education Program?

This program provides financial assistance to State educational agencies (SEAs) for supplementary educational services and costs for immigrant children enrolled in elementary and secondary public schools under the jurisdiction of local education agencies (LEAs) in the States and in elementary and secondary nonpublic schools within the district served by LEAs in the States.

(Authority: 20 U.S.C. 3127)

§ 581.2 Who is eligible to apply for a grant under the Emergency Immigrant Education Program?

An SEA may apply for a grant if it has one or more LEAs in which the sum of the number of immigrant children who are enrolled, during the fiscal year in which funds are made available under this program, in elementary and secondary public schools under jurisdiction of the LEA and in elementary or secondary nonpublic schools within the district served by the LEA, is equal to at least either—

(a) Five hundred (500); or

(b) Three percent of the total number of students enrolled during that same fiscal year in public schools under the jurisdiction of the LEA and nonpublic schools within the district served by the LEA.

(Authority: 20 U.S.C. 3126)

§ 581.3 What regulations apply to the Emergency Immigrant Education Program?

The following regulations apply to the Emergency Immigrant Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 76 (State-Administered Programs), 34 CFR Part 77 (Definitions that apply to Department Regulations), 34 CFR Part 78 (Education Appeal Board), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 581.

(Authority: 20 U.S.C. 3122-3130)

§ 581.4 What definitions apply to the Emergency Immigrant Education Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Elementary school
Equipment
Fiscal year
Grant
Local educational agency
Nonpublic
Project
Public
Secondary school
Secretary
State
State educational agency
Subgrant
Supplies

(b) *Program definitions.* The following definitions apply to this part:

(1) "Elementary or secondary nonpublic schools" means schools which comply with the applicable compulsory attendance laws of the State and which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

(2)(i) "Immigrant children" means children who were not born in any State and who have been attending schools in any one or more States for less than three complete academic years.

(ii) For purposes of awards under this program, the term "immigrant" includes only persons who are "immigrants" under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(15)).

(Authority: 20 U.S.C. 3122)

Subpart B—How Does a State Apply for a Grant?

§ 581.10 What assurances must a State submit to receive a grant?

An SEA must submit to the Secretary the following assurances:

(a) An assurance that the educational programs, services, and activities for which payments under this program are made shall be administered by or under the supervision of the SEA.

(b) An assurance that payments under this program shall be used for supplementary educational services and costs for immigrant children.

(c) An assurance that payments made to an SEA under this program shall be distributed among LEAs within the State on the basis of the number of immigrant children counted in those LEAs, after adjusting each LEA's payment to reflect any reductions made to the SEA's award under § 581.20 (b) and (c), based on the level of appropriations for the fiscal year and the funds provided for immigrant children under programs with the same purpose.

(d) An assurance that the SEA shall not finally disapprove, in whole or in part, any application for funds received under this program without first affording the LEA reasonable notice and opportunity for a hearing.

(e) An assurance that the SEA will submit—

(1) A biennial report to the Secretary concerning the expenditure of funds by LEAs under this program; and

(2) Any other reports required by the Secretary under this program.

(f) The following assurances pertaining to the provisions of services to immigrant children enrolled in elementary and secondary nonpublic schools:

(1) An assurance that the extent consistent with the number of immigrant children enrolled in the elementary or secondary nonpublic schools within the district served by an LEA, the LEA, after consultation with appropriate officials of the schools, shall provide for the benefit of those children, secular, neutral, and nonideological services, materials, and equipment necessary for their education.

(2) An assurance that public agency shall administer and maintain control of funds provided under this program and shall administer and maintain title to any materials, equipment, and property repaired, remodeled, or constructed with program funds.

(3) An assurance that—

(i) Services under this program shall be provided by employees of a public agency or through contracts by a public agency with a person, association, agency, or corporation who or which, in the provision of these services, is independent of nonpublic elementary or secondary schools and religious organizations; and

(ii) Any employment or contract as described in paragraph (f)(3)(i) of this section, be under the supervision of the public agency and that funds provided under employment or contract not be commingled with State or local funds.

(Authority: 20 U.S.C. 3128, 3130)

[50 FR 32564, Aug. 13, 1985, as amended at 53 FR 39224, Oct. 5, 1988]

§ 581.11 What counts must an SEA provide?

(a) An SEA shall provide a count, taken during the current school year, of the number of immigrant children enrolled in public and nonpublic elementary and secondary schools for those LEAs in the State, in which the number of immigrant childern enrolled is equal to at least either—

(1) Five hundred; or

(2) Three percent of the total number of students enrolled in elementary and secondary public schools under the jurisdiction of an LEA and elementary and secondary nonpublic schools within the district served by the LEA.

(b)(1) For the immigrant children counted under paragraph (a) of this section, an SEA must also report the number of those children, who are eligible to receive services, and for whom funds are made available during the same fiscal year, under this program and other Federal programs—

(i) That have the same purpose as the Emergency Immigrant Education Program; and

(ii) For which funds are made available for that same purpose because of the refugee, parolee, asylee, or other immigrant status of the children eligible to be served by the funds.

(2) The Secretary identifies, for the purposes of counting children under paragraph (b)(1) of this section, the following Federal programs as programs that have the same purpose as the Emergency Immigrant Education Program:

(i) Programs(s) implementing section 412(d) of the Refugee Act of 1980, as amended, 8 U.S.C. 1522.

(ii) Programs(s) implementing the Refugee Education Assistance Act of 1980, as amended, 8 U.S.C. 1522 (note).

(3) The Secretary identifies in the application notice announcing the availability of funds under the Emergency Immigrant Education Program any additional legal authorities that may be established by Congress that have the same purpose as the Emergency Immigrant Education Program.

(Approved by the Office of Management and Budget under control number 1885-0507)

(Authority: 20 U.S.C. 3126(b))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 581.20 How does the Secretary determine the amount of an award to a State?

To determine the amount of an award to an SEA, the Secretary—

(a) Multiplies by $500 the number of immigrant children reported by each SEA under § 581.11(a) who are enrolled in schools In LEAs that meet the enrollment threshold in § 518.2(b).

(b) Subtracts, from the product under paragraph (a) of this section, the amount of the funds made available under any other Federal program(s) identified under § 581.11(b) for those immigrant children who are eligible to receive services under the identified program(s) and the Emergency Immigrant Education Program:

(c) Determines each SEA's share of the total funds available under this program based on the ratio of the amount determined for an SEA under paragraph (b) of this section, to the total of the amounts determined for all SEAs, under paragraph (b) of this section; and

(d) If necessary, reduces the allocations to the SEAs to the extent necessary to bring the total amount of awards for all SEAs within the limit of the amount appropriated for the fiscal year.

(Authority: 20 U.S.C. 3123(b), 3124, 3126(b))

Subpart D—[Reserved]

Subpart E—How Does a State Make a Subgrant to an Applicant?

§ 581.40 How does a State determine the amount of a subgrant to an LEA?

(a) An SEA may reserve up to 1.5 percent of its award for the proper and efficient administration of this program.

(b) To determine the amount of a subgrant to an LEA, the SEA—

(1) Subtracts from the State grant, the administrative costs allowable under paragraph (a) of this section;

(2) Multiplies by $500 the number of immigrant children reported by each LEA that meets the enrollment threshold in § 581.2;

(3) Subtracts, from the amount determined under paragraph (b)(2) of this section, the funds made available under any other Federal program(s) identified under § 581.11(b) for those immigrant children who are eligible to receive services under the identified program(s) and the Emergency Immigrant Education Program;

(4) Determines the LEA's share of the total funds available under this program based on the ratio of the amount determined for an LEA under paragraph (b)(3) of this section, to the total amount determined under paragraph (b)(1) of this section to be available for subgrants to LEAs in the State; and

(5) If necessary, reduces the allocations to the LEAs to the extent necessary to bring the total amount of subgrants to the LEAs within the amount determined under paragraph (b)(1) of this section to be available for subgrants to LEAs.

(Authority: 20 U.S.C. 3123(b), 3126(b), 3128(a)(3))

Subpart F—What Conditions Must Be Met by the State and its Subgrantees?

§ 581.50 How may funds be used under this program?

Subgrants under this program may be used to meet the costs of providing for—

(a) Supplementary educational services necessary to enable immigrant children to achieve a satisfactory level of performance in schools, including but not limited to—

(1) English language instruction;

(2) Other bilingual educational services; and

(3) Special materials and supplies;

(b) Additional basic instructional services that are directly attributable to the presence of immigrant children in the school district, including the costs of providing—

(1) Classroom supplies;

(2) Overhead costs;

(3) Costs of construction;

(4) Acquisition or rental of space; and

(5) Transportation costs; and

(c) Essential inservice training for personnel who will be providing supplementary educational services or basic instructional services to immigrant children.

(Authority: 20 U.S.C. 3127)

§ 581.51 How is the eligibility of an immigrant child determined?

(a) *Basis requirement.* An SEA may not count a child under § 581.11(a) until the SEA has—

(1) Determined that the child meets the definition of immigrant children in § 581.4(b)(2); and

(2) Made a record of how the child's eligibility was determined.

(b) *Informational basis.* (1) In determining eligibility, an SEA may rely on credible information from any source, including information contained in previous school records and information provided by the child or the child's parent or guardian.

(2) An SEA is not required to obtain documentary evidence of the child's civil status from the child or the child's parent or guardian.

(Approved by the Office of Management and Budget under control number 1885-0507)

(Authority: 20 U.S.C. 3122, 3125, 3126(c))

§ 581.52 What requirements pertain to the participation of immigrant children in elementary and secondary nonpublic schools?

(a) An LEA is required after consultation with appropriate officials of elementary and secondary nonpublic schools within the district served by the LEA, to provide for the benefit of immigrant children enrolled in those schools, secular, neutral, and nonideological services, materials, and equipment necessary for the education of these immigrant children.

(b) If by reason of any provision of law an LEA is prohibited from providing educational services to immigrant children enrolled in elementary and secondary nonpublic schools, of if the Secretary determines that an LEA has substantially failed or is unwilling to provide for the participation on an equitable basis of children enrolled in elementary or secondary nonpublic schools, the Secretary—

(1) May waive the requirement that the LEA serve those children; and

(2) Arrange for the provision of services to those children.

(c) Any waiver of the requirements that an LEA provide services to immigrant children enrolled in elementary and secondary nonpublic schools is subject to consultation, withholding, notice, and judicial review requirements in accordance with the provisions of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, and the regulations in §§ 581.53 through 581.58.

(Authority: 20 U.S.C. 3128(a)(6), 3129(b))

[50 FR 32564, Aug. 13, 1985, as amended at 53 FR 39224, Oct. 5, 1988]

§ 581.53 When does the Secretary implement a bypass?

(a) The Secretary implements a bypass if an LEA—

(1) Is prohibited by law from providing the services under this part for private school children on an equitable basis as required in § 581.52; or

(2) Has substantialaly failed or is unwilling to provide the services under this part for private school children on an equitable basis as required in § 581.52.

(b) If the Secretary implements a bypass, the Secretary waives the responsibility of the LEA for providing supplemental educational services for private school children and arranges to provide the required services. Normally, the Secretary hires a contractor to provide the supplementary educational services for private school children under a bypass. The Secretary deducts the cost of these services, including any administrative costs, from the appropriate allotment of Emergency Immigrant Education Program funds. In arranging for these services, the Secretary consults with appropriate public and private school officials.

(Authority: 20 U.S.C. 3129(b))

§ 581.54 What notice does the Secretary give?

(a) Before taking any final action to implement a bypass, the Secretary provides the affected LEA, with written notice.

(b) In the written notice, the Secretary—

(1) States the reason for the proposed bypass in sufficient detail to allow the LEA to respond;

(2) Cites the requirement with which the LEA allegedly failed to comply; and

(3) Advises the LEA that it has at least 45 days from receipt of the written notice to submit written objections to the proposed bypass and to request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the LEA by certified mail with return receipt requested.

(Authority: 20 U.S.C. 3129(b))

§ 581.55 What bypass procedures does the Secretary follow?

Sections 581.56 through 581.58 contain the procedures that the Secretary uses in conducting a show cause hearing. These procedures may be modified by the hearing officer if all parties agree it is appropriate to modify them for a particular case.

(Authority: 20 U.S.C. 3129(b))

§ 581.56 What are the functions of a hearing officer?

(a) If an LEA requests a show cause hearing, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the LEA, representatives of the private school children and the Department of Education of the time and place of the hearing.

(Authority: 20 U.S.C. 3129(b))

§ 581.57 What are the hearing procedures?

(a) At the hearing a transcript is taken. The LEA and representatives of the private school children each may be represented by legal counsel, and each may submit oral or written evidence and arguments at the hearing.

(b) Within ten days after the hearing, the hearing officer indicates that a decision will be issued on the basis of the existing record, or requests further information from the LEA, representatives of the private school children, or Department of Education officials.

(Authority: 20 U.S.C. 3129(b))

§ 581.58 What are the post-hearing procedures?

(a) Within 120 days after the hearing record is closed, the hearing officer issues a written decision on whether the proposed bypass should be implemented. The hearing officer sends copies of the decision to the LEA, representatives of private school children, and the Secretary.

(b) The LEA and representatives of private school children each may submit written comments on the decision to the Secretary within thirty days from receipt of the hearing officer's decision.

(c) The Secretary may adopt, reverse, or modify the hearing officer's decision.

(Authority: 20 U.S.C. 3129(b))

Subpart G—What Compliance Procedures Are Used by the Department of Education?

§ 581.60 Under what conditions does the Secretary withhold funds?

(a) If the Secretary determines, after affording reasonable notice and opportunity for a hearing to an SEA, that the SEA has failed to meet the requirements of this program, the Secretary—

(1) Notifies the SEA that further payments under this program will not be made to the SEA; or

(2) Notifies the SEA that it may not make further payments under this program to specified LEAs whose ac-

tions cause or are involved in the failure to meet program requirements.

(b) Payments withheld under paragraph (a) of this section, will not be resumed until the Secretary is satisfied that there is no longer a failure to comply.

(c)(1) If the Secretary determines, after reasonable notice and opportunity for a hearing to an SEA, that any amount of a payment made to a State will not be used by the State for carrying out the purposes of this program, the Secretary makes that amount available to one or more other States to the extent that the Secretary determines that those States are able to use additional funds for carrying out the purposes of the program.

(2) The Secretary considers any additional amount made available to an SEA under this provision from an appropriation for a fiscal year as part of that SEA's award for that fiscal year, but the additional amount remains available until the end of the succeeding fiscal year.

(d) The procedures in 34 CFR Part 78 (Education Appeal Board) governing the withholding of funds apply to any determinations made by the Secretary under paragraphs (a) and (c) of this section.

(Authority: 20 U.S.C. 3125, 3126 (b) and (c))

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CROSS-REFERENCE: Regulations for State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of all Students to That Instruction, 34 CFR Part 208.

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

Subpart A—General

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AUTHORITY: 20 U.S.C. 1085, 1088, 1094 (c)(3), and 1141, unless otherwise noted.

SOURCE: 53 FR 11210, Apr. 5, 1988, unless otherwise noted.

Subpart A—General

§ 600.1 Scope.

This part establishes the rules and procedures that the Secretary uses to determine whether an institution or school qualifies as an eligible institution under the Higher Education Act of 1965, as amended (HEA). An eligible institution may apply to participate in programs authorized by the HEA (HEA programs).

(Authority: 20 U.S.C. 1085 (a), (b), and (e), 1088 (b) and (c), 1094(c)(3) and 1141(a))

§ 600.2 Definitions.

The following definitions apply to terms used in this part:

Accredited: The status of public recognition which a nationally recognized accrediting agency or association grants to an institution, school, or educational program which meets certain established qualifications and educational standards.

Clock hour: A period of time consisting of—

(a) A 50- to 60-minute class, lecture, or recitation;

(b) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship; or

(c) Sixty minutes of preparation in a program of study by correspondence.

Educational program: A legally authorized postsecondary program of organized instruction or study which leads to an academic or professional degree, vocational certificate, or other recognized educational credential. However, the Secretary does not consider that an institution provides an educational program if the institution does not provide instruction itself (including a course of independent study) but merely gives credit for one or more of the following: instruction provided by other institutions or schools, examinations provided by agencies or organizations, or other accomplishments such as "life experience."

Eligible institution: Includes—

(a) An institution of higher education, as defined in § 600.4;

(b) A proprietary institution of higher education, as defined in § 600.5;

(c) A postsecondary vocational institution, as defined in § 600.6; and

(d) A vocational school, as defined in § 600.7.

Legally authorized: The legal status granted to an institution through a charter, license, or other written document issued by the appropriate agency or official of the State in which the institution is physically located.

Nationally recognized accrediting agency or association: An agency or association that the Secretary has recognized to accredit or preaccredit a particular category of institution, school, or educational program in accordance with the provisions contained in 34 CFR Part 603. The Secretary periodically publishes a list of those nationally recognized accrediting agencies and associations in the FEDERAL REGISTER.

Nonprofit institution: An institution that—

(a) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;

(b) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and

(c) Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax deductible in accordance with section 501(c)(3) of the Internal Revenue Code.

One-year training program: An educational program that is at least—

(a) Twenty-four semester or trimes-er hours or units, or 36 quarter hours r units, at an institution using credit hours or units to measure academic progress;

(b) Nine hundred clock hours of supervised training at an institution using clock hours to measure academic progress; or

(c) Nine hundred clock hours in a program of study by correspondence.

Part B loan programs: The Guaran-eed Student Loan (GSL), PLUS, Sup-lemental Loans for Students, and onsolidated Loan Programs. Each of hese loan programs is authorized nder Part B of Title IV of the HEA.

Preaccredited: A status that—

(a) A nationally recognized accredit-ng agency or association, recognized y the Secretary to grant that status, as accorded an unaccredited public or rivate nonprofit institution that is rogressing toward accreditation ithin a reasonable period of time; nd

(b) The Secretary determines is the xclusive indication under sections 35(b)(5)(A) and 1201(a)(5)(A) of the EA that an institution will meet the ccreditation standards of a nationally cognized accrediting agency or asso-ation within a reasonable time.

Program of study by correspondence: n educational program offered prin-pally by mail by an institution. nder this type of program, the institution prepares lesson materials and mails them to the student in a sequential and logical order. The student completes the lessons and mails them back to the institution within a specified period of time. The program may include a required period of residential training.

Recognized equivalent of a high school diploma:

(a) A General Education Development (GED) Certificate; or

(b) A State certificate received by a student after the student has passed a State authorized examination which the State recognizes as the equivalent of a high school diploma.

Recognized occupation: An occupation that is—

(a) Listed in an "occupational division" of the latest edition of the *Dictionary of Occupational Titles*, published by the U.S. Department of Labor, or

(b) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree or certificate.

Secretary: The Secretary of the Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

Six-month training program: Either—(a) An educational program that is at least—

(1) Sixteen semester or trimester hours or units, or 24 quarter hours or units, at an institution using credit hours or units to measure academic progress;

(2) Six hundred clock hours of supervised training at an institution using clock hours to measure academic progress; or

(3) Six hundred clock hours in a program of study by correspondence; or

(b) An educational program which the Secretary determines is at least a six-month training program on the basis of—

(1) A certification by the nationally recognized accrediting association that accredits the institution that the program offered by the institution is equal in course content and student workload to the comparable clock or

credit hour program described in paragraphs (a) (1) through (3) of this definition; and

(2) The Secretary's ratification of that accrediting agency's determination.

State: A State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1071 *et seq.;* 1078-2, 1085, 1088, and 1141 and 26 U.S.C. 501(c))

§ 600.3 Special conditions.

For the purpose of §§ 600.4, 600.5, 600.6, and 600.7:

(a) The Secretary considers an institution other than one offering only a program of correspondence to be "in a State" only if the institution's campus or place of instruction is physically located in that State.

(b) The Secretary considers an institution offering only a program of study by correspondence to be located only in the State in which its administrative office is located if the program does not include a period of residential training. If the program includes a period of residential training, the Secretary considers the institution to be located and the State in which its administrative office is located and the State in which its residential program is located.

(c)(1) If a State requires an institution to measure its educational programs in clock hours in order to be legally authorized in that State to provide a program of education beyond secondary education, the Secretary considers that institution is legally authorized in that State to provide a program of education beyond secondary education only if the institution measures its educational programs in clock hours.

(2) If a State requires a vocational school to measure its vocational or technical education programs in clock hours in order to be legally authorized in the State to provide a program of postsecondary vocational or technical education, the Secretary considers that vocational school to be legally authorized to provide a program postsecondary vocational or technical education in that State only if the vocational school measures its vocational or technical programs in clock hours.

(d)(1) If as part of the application process for receiving a license, charter, or other document that demonstrates it is legally authorized to provide a program of education beyond secondary education in a State, the State requires an institution to measure its educational programs in clock hours, the Secretary considers that institution to be legally authorized to provide a program of education beyond secondary education in that State only if the institution measures its educational programs in clock hours.

(2) If as part of the application process for receiving a license, charter, or other document that demonstrates it is legally authorized to provide a postsecondary vocational or technical education program in a State, the State requires a vocational school to measure its educational programs in clock hours, the Secretary considers that institution to be legally authorized to provide a program of education beyond secondary education in that State only if the institution measures its educational programs in clock hours.

(Authority: 20 U.S.C. 1085 (b) and (c), 1088 (b) and (c), and 1141(a))

§ 600.4 Institution of higher education.

(a) An institution of higher education is a public or private non-profit educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located, and, if the institution seeks to participate in a program other than a Part B loan program, have the ability to benefit, as determined by the institution in accordance with § 600.11, from the training offered;

(3) Is legally authorized to provide an educational program beyond sec-

ondary education in the State in which the institution is located;

(4) Provides an educational program—

(i) For which it awards an associate, baccalaureate, graduate, or professional degree, or other recognized educational credential;

(ii) Which is at least a two-year program acceptable for full credit toward a baccalaureate degree; or

(iii) Which is at least a one-year training program that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation; and

(5) Is—

(i) Accredited or preaccredited by a nationally recognized accrediting agency or association;

(ii) An institution whose credits the Secretary determines, in accordance with the provisions contained in § 600.8, to be accepted on transfer by at least three accredited institutions for credit on the same basis as transfer credits from any accredited institution; or

(iii) Approved by a State agency that the Secretary recognizes, by listing in the FEDERAL REGISTER in accordance with 34 CFR Part 603, as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution—

(A) Is a public postsecondary vocational educational institution; and

(B) Seeks to participate only in Federal student assistance programs.

(b)(1) An institution, other than an institution that is eligible to participate only in a Part B loan program, that admits as regular students persons who do not have a high school diploma or its recognized equivalent and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall consistently apply standards and procedures for determining, in accordance with § 600.11, whether these persons have the ability to benefit from the education or training it offers.

(2) An institution must be able to demonstrate, upon request of the Secretary, that each regular student that it admitted who did not have a high school diploma or its recognized equivalent satisfied the institution's standards under paragraph (b)(1) of this section.

(3) An institution shall retain for at least five years documentation that demonstrates a student's ability to complete successfully the program in which the student was enrolled, if the student was admitted to the institution under the institution's ability-to-benefit standards.

(c) Notwithstanding the provisions in paragraph (a) of this section, the Secretary does not determine an institution to be eligible to apply to participate in the Part B loan programs if the institution uses or employs commissioned salespersons to promote the availability of Part B loan program loans at that institution.

(Approved by the Office of Management and Budget under control number 1840-0098)

(Authority: 20 U.S.C. 1085, 1094(c)(3), and 1141(a))

[53 FR 11210, Apr. 5, 1988, as amended at 53 FR 49146, Dec. 6, 1988; 54 FR 27161, June 28, 1989]

§ 600.5 Proprietary institution of higher education.

(a) A proprietary institution of higher education is an educational institution which—

(1) Is not a public or private nonprofit educational institution;

(2) Is in a State;

(3) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit, as determined by the institution in accordance with § 600.11, from the training offered;

(4) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

(5) Provides at least a six-month training program to prepare students for gainful employment in a recognized occupation;

(6) Is accredited by a nationally recognized accrediting agency or association; and

(7) Has been in existence for at least two years. The Secretary considers a proprietary institution to have been in existence for two years only if it has been legally authorized to provide, and has provided, a continuous training program to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(b)(1) A proprietary institution that admits as regular students persons who do not have a high school diploma or its recognized equivalent and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall consistently apply standards and procedures for determining, in accordance with § 600.11, whether these students have the ability to benefit from the education or training it offers.

(2) An institution must be able to demonstrate, upon request of the Secretary, that each regular student that it admitted who did not have a high school diploma or its recognized equivalent satisfied the institution's standards under paragraph (b)(1) of this section.

(3) An institution must retain for at least five years documentation that demonstrates a student's ability to complete successfully the program in which the student was enrolled, if the student was admitted to the institution under the institution's ability-to-benefit standards.

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(Authority: 20 U.S.C. 1088(b))

[53 FR 11210, Apr. 5, 1988, as amended at 53 FR 49146, Dec. 6, 1988; 54 FR 27161, June 28, 1989]

§ 600.6 Postsecondary vocational institution.

(a) A postsecondary vocational institution is a public or private nonprofit educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit, as determined by the institution in accordance with § 600.11, from the training offered;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located.

(4) Provides at least a six-month training program to prepare students for gainful employment in a recognized occupation;

(5) Is—

(i) Accredited or preaccredited by a nationally recognized accrediting agency or association;

(ii) An institution whose credits the Secretary determines, in accordance with the provisions contained in § 600.8, to be accepted on transfer by at least three accredited institutions for credit on the same basis as transfer credits from any accredited institution; or

(iii) Approved by a State agency that the Secretary recognizes, by listing in the FEDERAL REGISTER in accordance with 34 CFR Part 603, as a reliable authority on the quality of public postsecondary vocational education in the State, if the institution is a public postsecondary vocational educational institution.

(6) Has been in existence for at least two years. The Secretary considers an institution to have been in existence for two years only if it has been legally authorized to provide, and has provided, a continuous training program to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(b)(1) A postsecondary vocational institution that admits as regular students persons who do not have a high school diploma or its recognized equivalent and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall consistently apply standards and procedures for determining, in accordance with § 600.11, whether these students have the ability to benefit from the education or training it offers.

(2) An institution must be able to demonstrate, upon request of the Secretary, that each regular student that it admitted who did not have a high school diploma or its recognized equivalent satisfied the institution's standards under paragraph (b)(1) of this section

(3) An institution must retain for at least five years documentation that demonstrates a student's ability to complete successfully the program in which the student was enrolled, if the student was admitted to the institution under the institution's ability-to-benefit standards.

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(Authority: 20 U.S.C. 1088 and 1094(c)(3))

[53 FR 11210, Apr. 5, 1988, as amended at 53 FR 49146, Dec. 6, 1988; 54 FR 27161, June 28, 1989]

§ 600.7 Vocational school.

(a) A vocational school is a business or trade school, technical institution, or other technical or vocational school which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have completed or left elementary or secondary school; and

(ii) Have the ability to benefit, as determined by the institution in accordance with § 600.11, from the training offered;

(3) Is legally authorized in the State in which the school is physically located to provide, and provides within that State a program of postsecondary vocational or technical education that—

(i) Is designed to provide occupational skills to fit individuals for useful employment in recognized occupations;

(ii) Is not less than—

(A) Eight semester or trimester hours or units, or 12 quarter hours or units, at a school using credit hours or units to measure the academic progress; or

(B) Three hundred clock hours of supervised training at a school using clock hours to measure progress;

(iii) In the case of a program of study by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion of a minimum of 300 clock hours in not less than six months; and

(iv) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration:

(4) Is—

(i) Accredited by a nationally recognized accrediting agency or association; or

(ii) In the case of a public vocational school, approved by a State agency that the Secretary recognizes, by listing in the FEDERAL REGISTER, in accordance with 34 CFR Part 603, as a reliable authority on the quality of public postsecondary vocational education in the State;

(5) Has been—

(i) In existence for two years; or

(ii) Has been specifically determined by the Secretary to be an eligible location of a vocational school despite not having been in existence for two years; and

(6) Does not use or employ commissioned sales persons to promote the availability of Part B loan program loans at that school.

(b) For purposes of this section, the Secretary considers a school to have been in existence for two years only if it has been legally authorized to provide and has provided, a continuous training program to fit individuals for useful employment in recognized occupations during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(c)(1) A school that admits as regular students persons who do not have a high school diploma or its recognized equivalent shall consistently apply standards and procedures for determining, in accordance with § 600.11, whether these persons have the ability to benefit from the training it offers.

(2) A school must be able to demonstrate, upon request of the Secretary, that each regular student that it admitted who did not complete, or who

left, elementary or secondary school satisfied the school's standards under paragraph (c)(1) of this section.

(3) A school must retain for at least five years documentation that demonstrates a student's ability to complete successfully the program in which the student was enrolled, if the student was admitted to the institution under the institution's ability-to-benefit standards.

(Approved by the Office of Management and Budget under control number 1840-0098)

(Authority: 20 U.S.C. 1085 and 1094(c)(3))

[53 FR 11210, Apr. 5, 1988, as amended at 53 FR 49146, Dec. 6, 1988; 54 FR 27161, June 28, 1989]

§ 600.8 Transfer-of-credit alternative to accreditation.

(a) For an unaccredited public or private nonprofit institution to satisfy the requirements of § 600.4(a)(5)(ii) or § 600.6(a)(5)(ii), the Secretary must determine that—

(1) At least three accredited institutions, which satisfy the conditions in paragraph (c) of this section, have a policy of accepting on transfer the credits of a student who transfers from the unaccredited institution on the same basis as they accept on transfer the credits of a student who transfers from any accredited institution;

(2) Within the three years preceding the date the unaccredited institution applies for a determination that it satisfies the requirements of § 600.4(a)(5)(ii) or § 600.6(a)(5)(ii)—

(i) At least twelve of the unaccredited institution's regular students or former regular students transferred to at least three of the accredited institutions identified under paragraph (a)(1) of this section, with a minimum of four transfer students to each accredited institution; and

(ii) Each of at least three of the accredited institutions to which the twelve students transferred accepted the credits of the students who transferred for credit on the same basis as it accepted the credits of students who transferred from any accredited institution.

(b) For the purposes of paragraph (a)(2) of this section, the Secretary considers that a student has transferred to an accredited institution if—

(1) The student has enrolled as a regular student in an accredited educational program in the accredited institution;

(2) The student no longer remains enrolled as a regular student at the unaccredited institution;

(3) The student has attended classes at the accredited institution for a period of time that exceeds the date beyond which the student would, upon withdrawal, qualify for the maximum refund of tuition and fees available to a student who attends at least one day of class; and

(4) The accredited institution has officially applied the credits earned by the student at the unaccredited institution toward a degree or certificate that it offers.

(c) To qualify under paragraph (a) of this section, an accredited institution must—

(1) Offer an educational program that is at least as long, in terms of academic years, academic terms, or clock hours, as the longest educational program offered at the unaccredited institution;

(2) Offer a degree or certificate at least as advanced as the highest degree or certificate offered at the unaccredited institution; and

(3) Apply the transfer credits toward an accredited degree or certificate program in which the transfer students will not constitute a majority of the students enrolled.

(d) If an unaccredited institution that was previously accredited or preaccredited has lost that status and applies for a determination that it satisfies the requirements of this section—

(1) The students described in paragraph (a)(2) of this section must have earned the transferred credits from the unaccredited institution after the institution lost its accreditation or preaccreditation; and

(2) Each accredited institution described in paragraph (a) of this section must know, when it accepts the credits of the transfer students, that the applicant institution lost its accreditation or preaccreditation before the credits to be transferred were earned.

(e)(1) The applicant unaccredited institution shall provide sufficient information and documentation to enable the Secretary to determine whether the unaccredited institution satisfies the requirements of this section. The information and documentation must include, but is not limited to—

(i) Information as to the length of the educational programs offered by the applicant unaccredited institution and the highest degree or certificate it offers;

(ii) The names and addresses of the institutions described in paragraph (a) of this section, and for each institution, the length of its educational programs and the degrees and certificates it offers;

(iii) The names of students described in paragraph (a)(2) of this section, and the dates those students attended their first classes at the applicant institution as well as the accredited institution;

(iv) Enrollment records from each of the institutions identified in accordance with paragraph (e)(1)(ii) of this section for the transfer students identified in accordance with paragraph (e)(1)(iii) of this section;

(v) An official publication of each institution identified in accordance with paragraph (e)(1)(ii) of this section that contains that institution's policy with regard to the acceptance of credits on transfer from accredited and unaccredited institutions;

(vi) Whether the applicant has ever been accredited or preaccredited and if so, the date on which it lost that accreditation or preaccreditation;

(vii) A certified statement from the dean of admissions or the registrar of the applicant unaccredited institution indicating that the institution has not paid, nor will it pay, to any accredited institution identified in accordance with paragraph (e)(1)(ii) of this section, any remuneration or compensation of any kind in exchange for accepting its credits, students or former students; and

(viii) A certified statement from the dean of admissions or registrar of each accredited institution identified in accordance with paragraph (e)(1)(ii) of this section indicating—

(A) That the policy of that institution is to accept the credits of students transferring from the applicant unaccredited institution for credit on the same basis that it accepts the credits of students transferring from any accredited institution;

(B) That the institution has not received and will not receive remuneration or compensation of any kind in exchange for accepting the unaccredited institution's credits or students;

(C) That the students identified in accordance with paragraph (e)(1)(iii) of this section transferred as regular students into accredited educational programs at the institution by enrolling and attending classes in those programs;

(D) The dates of enrollment of each of the students identified in accordance with paragraph (e)(1)(iii) of this section; and

(E) That the institution knows that the unaccredited institution is unaccredited and, if applicable, that the unaccredited institution has lost its accreditation or preaccreditation and the date of that loss.

(2) The Secretary does not begin to evaluate whether the unaccredited institution satisfies the requirement of this section until the applicant unaccredited institution provides all the information and documentation required for that determination.

(3) The Secretary may require, as a condition for making a determination that the applicant unaccredited institution has satisfied the requirements of paragraph (a) of this section, that any of the accredited institutions identified in accordance with paragraph (e)(1)(ii) of this section confirm the accuracy of the information or documentation provided by the applicant which pertains to that accredited institution.

(f)(1) If the Secretary determines that an institution satisfies the requirements of this section, that determination remains in effect for three years.

(2) An institution may apply under this section for a renewal of its transfer-of-credit determination at the end of the three-year period. In that renewal application, the institution must identify an additional twelve students

who have transferred, as described in paragraph (a)(2)(i) of this section.

(Approved by the Office of Management and Budget under control number 1840-0098)

(Authority: 20 U.S.C. 1085(b) and 1141(a))

[53 FR 11210, Apr. 5, 1988, as amended at 53 FR 49146, Dec. 6, 1988]

§ 600.9 Written agreement between an eligible institution and another institution or organization.

(a) Subject to the conditions in paragraphs (b), (c), and (d) of this section, an eligible institution described in paragraph (b) of this section may, without losing its eligibility under this part, enter into a written agreement with another institution or organization under which that other institution or organization provides all or part of the educational program of students enrolled in the eligible institution.

(b) The provisions of this section apply only to an eligible institution that—

(1)(i) Is accredited or preaccredited by a nationally recognized accrediting agency or association; or

(ii) Is approved by a State agency that the Secretary recognizes, by listing in the FEDERAL REGISTER in accordance with 34 CFR Part 603, as a reliable authority on the quality of public postsecondary vocational education in the State; and

(2) Gives credit to students enrolled in the portion of the educational program that is provided by the other institution or organization on the same basis as if it provided that portion of the program itself.

(c) If an eligible institution enters into a written agreement with another eligible institution, there is no limit on the portion of a student's educational program that may be provided under the agreement.

(d) If an eligible institution enters into an agreement with an institution or organization that is not an eligible institution—

(1) The ineligible institution or organization may provide up to 25 percent of the educational program of a student enrolled in the eligible institution; or

(2) The ineligible institution or organization may provide more than 25 percent but not more than 50 percent of the educational program of a student enrolled in the eligible institution if—

(i) The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership or corporation; and

(ii) The eligible institution's nationally recognized accrediting agency or association or recognized State agency specifically determines that the institution's agreement meets the agency's or association's standards for the contracting out of educational services.

(Authority: 20 U.S.C. 1094)

§ 600.10 Date, extent, duration, and consequence of eligibility.

(a) *Date of eligibility.* If the Secretary determines that an applicant satisfies all the statutory and regulatory eligibility requirements, the Secretary considers the institution as an eligible institution as of the date the Secretary receives all the information necessary to make that eligibility determination.

(b)(1) *Extent of eligibility.* If the Secretary determines that the entire applicant institution, including all its locations and all its educational programs, satisfies the applicable requirements of this subpart, the Secretary extends eligibility to all educational programs and locations identified on the institution's application for eligibility.

(2) If the Secretary determines that only certain educational programs or certain locations of an applicant institution satisfy the applicable requirements of this subpart, the Secretary extends eligibility only to those educational programs and locations which meet those requirements and identifies the eligible educational programs and locations in the eligibility notice sent in accordance with § 600.21.

(3) Eligibility does not extend to any location that the institution establishes after it receives the eligibility designation. If an eligible institution seeks to establish eligibility for a new

location, the institution shall apply under § 600.20.

(c) *Subsequent additions of educational programs.* (1) If an institution that has been designated by the Secretary as an eligible institution adds educational programs after that designation, the institution need not apply to the Secretary to have those additional programs designated as eligible programs but may determine on its own whether those programs satisfy the relevant statutory and regulatory eligibility requirements.

(2) If an institution incorrectly determines that its educational program satisfies the applicable statutory and regulatory eligibility provisions, the institution shall be liable to repay to ED all the student financial assistance and other ED program funds it or its students received who were enrolled in that educational program.

(d) *Duration of eligibility.* In addition to the requirements of § 600.30, an institution shall renew its designation of eligibility, including all its educational programs and all its locations, every four years.

(e) *Consequence of eligibility.* (1) An eligible institution may apply to participate in the programs authorized by the HEA which are listed in the eligibility notice that it receives under § 600.21.

(2) Merely by virtue of its designation as an eligible institution in the eligibility notice it receives under § 600.21, an institution is not automatically eligible to—

(i) Participate in the programs authorized by the HEA which are listed in the eligibility notice that it receives under § 600.21; or

(ii) Receive funds under any program authorized by the HEA.

(Approved by the Office of Management and Budget under control number 1840-0098)

(Authority: 20 U.S.C. 1085, 1088, and 1141)

[53 FR 11210, Apr. 5, 1988, as amended at 53 FR 49146, Dec. 6, 1988]

§ 600.11 Ability to benefit.

(a) If an institution admits as a regular student a person who does not have a high school diploma or its equivalent, the institution shall determine, at the time of admission, whether that person has the ability to benefit from the education or training the institution offers.

(b) An institution shall determine whether a person described in paragraph (a) of this section has the requisite ability by—

(1) Administering to the person a nationally recognized, standardized, or industry developed test, subject to criteria of the institution's accrediting agency or association, that measures the applicant's aptitude to successfully complete the educational program for which the student has applied; or

(2) Determining that the person has the capability to successfully complete a GED preparation program by the end of the first year of the course of study or prior to the student's certification or graduation from the program of study, whichever is earlier; or

(3) Placing the person, after counseling or failure to meet the institution's admission's testing requirement, in an institutionally prescribed program or course of remedial or developmental education not to exceed one academic year or its equivalent.

(Authority: 20 U.S.C. 1085, 1088, 1091, and 1141)

Subpart B—Procedures for Establishing Eligibility

§ 600.20 Application procedures.

(a) An institution that wishes to establish its eligibility to apply to participate in any program authorized by the HEA must first apply to the Secretary for a determination that it qualifies as an eligible institution.

(b) An institution applying for designation as an eligible institution must—

(1) Apply on the form prescribed by the Secretary; and

(2) Provide all the information and documentation requested by the Secretary to make a determination of its eligibility.

(Approved by the Office of Management and Budget under control number 1840-0098)

(Authority: 20 U.S.C. 1085, 1088, and 1141)

[53 FR 11210, Apr. 5, 1988, as amended at 53 FR 49146, Dec. 6, 1988]

§ 600.21 Eligibility notification.

(a) The Secretary notifies an institution in writing of the Secretary's determination—

(1) Whether the applicant institution qualifies in whole or in part as an eligible institution under the appropriate definition in §§ 600.4 through 600.7; and

(2) Of the HEA programs for which it is eligible to apply for participation.

(b) If only a portion of the applicant qualifies as an eligible institution, the Secretary specifies in the notification of eligibility letter only the locations or programs which qualify.

(Authority: 20 U.S.C. 1085, 1088, and 1141)

Subpart C—Maintaining Eligibility

§ 600.30 Institutional changes requiring review by the Secretary.

(a) An eligible institution shall notify the Secretary at the same time that it notifies its accrediting agency or association, but not later than ten days after the change occurs, of any change in the following information provided in the institution's eligibility application:

(1) Its name.

(2) Its address.

(3) The name, number, and address of locations other than the main campus at which it offers educational services.

(4) Its ownership, if that ownership change results in a change in control of the institution.

(5) The establishment of written agreements with other institutions or organizations in accordance with § 600.9(b)(2).

(b) The Secretary notifies the institution in writing if the change affects the institution's eligibility.

(c) The institution's failure to inform the Secretary of the information described in paragraph (a) of this section within the time period stated in that paragraph may result in adverse action against it, including the loss of its eligibilty.

(Approved by the Office of Management and Budget under control number 1840-0098)

(Authority: 20 U.S.C. 1085, 1088, and 1141)

[53 FR 11210, Apr. 5, 1988, as amended at 53 FR 49146, Dec. 6, 1988]

§ 600.31 Change in ownership resulting in a change of control.

(a) An eligible institution, or a previously eligible institution that participated in any HEA program, that changes ownership resulting in a change of control is not considered by the Secretary to be the same institution unless—

(1) The new owner agrees to be liable, or the old and new owners agree to be jointly and severally liable, for all HEA program funds which the institution received and improperly expended before the effective date of the change of control;

(2) The new owner agrees—

(i) To abide by the institution's policy regarding refunds of institutional charges to students in effect before the effective date of the change of control for students who were enrolled before the effective date; and

(ii) To honor all student enrollment contracts that were signed by the institution before the effective date of the change;

(3) The institution submits individual statements for the new owners listing assets, liabilities, and net worth and either—

(i) A profit and loss statement and balance sheet for the institution's latest complete fiscal year; or

(ii) An audit for the institution's latest complete fiscal year prepared by a licensed certified public accountant;

(4) The institution submits additional financial documents if requested by the Secretary because the financial information provided in paragraph (a)(3) of this section is insufficient; and

(5) The institution provides for the retention of all records required in connection with its designation as an eligible institution and its participation in any HEA program. These records must include a copy of the latest prior application requesting a determinaton of institutional eligibility for HEA programs, the Secretary's eligibility notification received as a result of that application, and the institution's participation agreement for the student aid programs.

(b) The Secretary may require that the profit and loss statement and balance sheet provided for in paragraph (a)(3)(i) of this section be audited and certified by a licensed certified public accountant.

(c) For the purposes of this part, a change in ownership of an institution that results in a change of control means any action by which a person or corporation obtains new authority to control the actions of that institution. That action may include, but is not limited to—

(1) The sale of the institution;

(2) The transfer of the controlling interest of stock of the institution or its parent corporation;

(3) The merger of two or more eligible institutions;

(4) The division of one institution into two or more institutions;

(5) The transfer of the controlling interest of stock or assets of the institution to its parent corporation; or

(6) The transfer of the liabilities of an institution to its parent corporation.

(d)(1) Except as provided in paragraph (d)(2) of this section, the Secretary considers an eligible institution, or a previously eligible institution that has participated in any HEA program, that changes ownership resulting in a change of control to be a new institution for the purpose of establishing eligibility if the new owner or owners of the institution have been convicted of or have pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or have been judicially determined to have committed fraud involving Federal funds.

(2) The Secretary may consider an eligible institution or a previously eligible institution to be the same institution for the purpose of establishing institutional eligibility under this part, if—

(i) The individuals who were convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime;

(ii) At least five years have elapsed from the date of the conviction, *nolo contendere* plea, guilty plea, or judicial determination; and

(iii) The funds that were fraudulently obtained or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid.

(e) If the Secretary considers an institution to be a new institution under this section, the institution under its new owner or owners must meet all applicable requirements for establishing eligibility, including, if applicable, the two years in existence requirement.

(Approved by the Office of Management and Budget under control number 1840-0098)

(Authority: 20 U.S.C. 1085, 1088(b), and 1094)

[53 FR 11210, Apr. 5, 1988, as amended at 53 FR 49146, Dec. 6, 1988]

§ 600.32 Loss of eligibility.

(a) An institution loses its eligibility on the date that—

(1) It fails to meet any of the eligibility requirements of this part;

(2) It permanently closes; or

(3) It ceases to provide educational programs (except during normal vacation periods).

(b) If the Secretary designates an institution as an eligible institution on the basis of inaccurate information or documentation, the Secretary's designation is void from the date it was made and the institution never qualified as an eligible institution.

(c) If an institution ceases to satisfy any of the requirements for eligibility under this part—

(1) It must notify the U.S. Department of Education within 30 days; and

(2) It becomes ineligible to continue to participate in any HEA program.

(Authority: 20 U.S.C. 1085, 1088 and 1141)

PART 601—ELIGIBILITY OF FOREIGN MEDICAL SCHOOLS UNDER THE GUARANTEED STUDENT LOAN PROGRAM (GSLP)

Sec.

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601.4 Criteria for determination of eligibility to apply for participation in the GSLP.
601.5 Duration of eligibility determination.
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601.7 Exception for students who received GSLP loans to attend foreign medical schools prior to publication date of this subpart.

Authority: Secs. 432 and 435(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1082, 1085(a)), unless otherwise noted.

Source: 48 FR 8063, Feb. 25, 1983, unless otherwise noted.

§ 601.1 Purpose and scope.

(a) An educational institution located outside the United States is eligible to apply for participation in the Guaranteed Student Loan Program (GSLP) if it is comparable to medical schools in the United States and has been otherwise approved by the Secretary for purposes of the GSLP. This subpart sets forth procedures and criteria by which the Secretary determines whether medical schools located outside the United States and Canada are eligible to apply for participation in the GSLP. "Participation" in the GSLP by a foreign medical school means that its students who are citizens or nationals of the United States may apply for loans from eligible lenders under that program.

(b) This subpart does not cover the procedures and criteria by which a foreign medical school determined eligible to apply for participation in the GSLP actually applies for such participation. Those procedures and criteria are set forth in the GSLP regulations, 34 CFR Part 682.

(c) With respect to medical schools located in Canada, the Secretary uses the same procedures and criteria for determining eligibility as for medical schools located in the United States, because the nationally recognized accrediting agency which accredits medical schools located in the United States also accredits medical schools located in Canada. Similarly, any other school, wherever located, which acquires the accreditation of an accrediting agency which the Secretary recognizes as comparable to the agency which accredits United States medical schools shall be subject to the procedures and criteria applied to United States medical schools, rather than to the provisions of this part.

(Authority: 20 U.S.C. 1082, 1085)

§ 601.2 Definitions.

For purposes of this subpart:

Foreign medical school means a medical school not located in a State or in Canada.

Guaranteed Student Loan Program (GSLP) means the student loan program authorized by Title IV, Part B of the Higher Education Act of 1965, as amended (20 U.S.C. 1071 to 1087-2, regulations in 34 CFR Part 682) and includes the PLUS program (Auxiliary Loan Program, regulations in 34 CFR Part 683), also authorized by Part B.

Medical school means a school which satisfies the criteria for listing as a medical school in the *World Directory of Medical Schools* published by the World Health Organization (WHO).

Pass rate means the number of examinations passed (with passing scores on both medicine *and* English sections) by persons counted as "United States citizens" for tabulation purposes by the ECFMG who were graduates of the medical school, or in attendance at the school, at the time the examinations they passed were administered, divided by the number of examinations taken by all persons counted as "United States citizens" for tabulation purposes by the ECFMG who were graduates of the medical school, or were in attendance at the school, at the time the examinations they took were administered, expressed as a percentage.

State or *United States* includes, in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(Authority: 20 U.S.C. 1082, 1085, 1141)

§ 601.3 Requesting an eligibility determination.

The Secretary may determine a foreign medical school eligible to apply for participation in the GSLP at any time, upon the request of either:

(a) A person who is

(1) Enrolled, or accepted for enrollment, at that school, and

(2) Otherwise eligible to receive a GSLP loan, or

(b) The school, on behalf of eligible students in attendance.

(Authority: 20 U.S.C. 1082, 1085)

§ 601.4 Criteria for determination of eligibility to apply for participation in the GSLP.

The Secretary determines that a foreign medical school is eligible to apply for participation in the GSLP only if it meets all of the following criteria:

(a) The school is a medical school, as defined in § 601.2.

(b) The school is both recognized as a medical school and approved by those evaluating bodies (such as medical associations or educational agencies) in the country in which the school is located whose views are considered relevant by the Secretary.

(c) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom medical instruction of not less than 32 months in length, which is supervised closely by members of the school's faculty and which is provided either (1) outside the United States, in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction, or (2) in the United States, through a training program for foreign medical students which has been approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary.

(d) The school has graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

(e) During the most recent twenty-four month period for which data is available prior to the date the Secretary receives a request for a determination of the school's eligibility, the school's American students have achieved a pass rate of not less than 50 per cent on the examination of the Educational Commission for Foreign Medical Graduates (ECFMG), Philadelphia, Pennsylvania; provided, however, that if the number of ECFMG examinations taken by American students or graduates of the school during the preceding twenty-four month period is less than eight, the Secretary shall not deem the school to have failed to satisfy this criterion unless, after assessing the ECFMG examination performance of the school's students and graduates over a preceding period greater than twenty-four months, the Secretary concludes that the ECFMG examination performance of the school's students and graduates has been significantly and consistently substandard for a prolonged period of time.

(Authority: 20 U.S.C. 1082, 1085)

§ 601.5 Duration of eligibility determination.

(a) A determination by the Secretary that a foreign medical school is eligible to apply for participation in the GSLP is effective for two years, subject to the qualifications set forth in § 601.6. The determination is not rescinded during the two-year period even if at any time during that period the school no longer meets the criterion set forth in § 601.4(e).

(b) At any time, the Secretary may require a school or student to update the information the school or student provided in an earlier request for an eligibility determination.

(Authority: 20 U.S.C. 1082, 1085)

§ 601.6 Determination that a school previously eligible under this subpart is no longer eligible.

(a) If at any time a school previously eligible under this subpart no longer meets any of the criteria set forth in § 601.4 other than the criterion set forth in § 601.4(e), it loses its eligibility on the date it no longer meets that criterion. In such a case, except as provided in § 601.7, no student may subsequently receive a GSLP loan for attendance at that school, until the school's eligibility is restored.

(b) Upon a determination, made by the Secretary after the expiration of the two-year period described in § 601.5, that a foreign medical school which was previously eligible under this subpart no longer satisfies the criterion set forth in § 601.4(e) but satisfies all other eligibility criteria, only those students enrolled at the foreign medical school who actually received GSLP loans for a period during which the school was eligible under this subpart may receive additional loans for the remainder of their enrollment at the school, provided the school continues to satisfy all eligibility criteria other than the criterion set forth in § 601.4(e) and provided those students continue to satisfy all other student eligibility requirements.

(Authority: 20 U.S.C. 1082, 1085)

§ 601.7 Exception for students who received GSLP loan to attend foreign medical school prior to publication date of this subpart.

Any student who was enrolled at a foreign medical school that was eligible to participate in the GSLP on the publication date of this subpart and who actually received a GSLP loan to attend that school for a period during which the school was eligible to participate in the GSLP may receive GSLP loans for the remainder of his or her enrollment at that school, despite the school's loss of eligibility under this subpart, provided the school continues to be a medical school, as defined in § 601.2, and provided the student continues to satisfy all other student eligibility requirements.

(Authority: 20 U.S.C. 1082, 1085)

PART 602—SECRETARY'S PROCEDURES AND CRITERIA FOR RECOGNITION OF ACCREDITING AGENCIES

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AUTHORITY: 20 U.S.C. 1058, 1061, 1085, 1088, 1141, 1401, 2471, and 3381, unless otherwise noted.

SOURCE: 53 FR 25096, July 1, 1988, unless otherwise noted.

Subpart A—General Provisions

§ 602.1 Purpose.

(a) This part establishes procedures and criteria for the Secretary's recognition of accrediting agencies. Recognition is based on the Secretary's determination that accrediting agencies are reliable authorities concerning the quality of education or training offered by the postsecondary educational institutions or programs within the agencies' respective scopes of operation.

(b) Accreditation of postsecondary institutions or postsecondary programs by agencies recognized by the Secretary is a prerequisite to eligibility for many types of Federal financial assistance for those institutions or programs and for the students enrolled in those institutions or programs.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.2 Definitions.

The following definitions apply to terms used in this part:

(a) *Definitions in the Education Department General Administrative Regulations.* The following terms used in this part are defined in 34 CFR 77.1:

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(b) *Definitions that apply to this part.* The following definitions also apply to this part:

Accrediting and *accreditation* refer to the status of public recognition which an agency grants to an educational institution or program which meets the agency's established qualifications and educational standards.

Accrediting agency and *agency* mean a legal entity, including an association, council, commission, or corporation, or a part of that entity, which conducts accrediting activities.

Act means the Higher Education Act of 1965, as amended.

Educational program or *program* means a legally authorized program of instruction or study, offered by an educational institution or other organization, that leads to an academic or professional degree, vocational certificate, or other recognized educational credential.

Preaccreditation means an agency's formal grant of status to an educational institution or program that signifies that the agency has determined that the institution or program is progressing towards accreditation within a reasonable period of time.

Recognized agency means an accrediting agency currently recognized by the Secretary under this part.

State means a State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.3 Recognition procedures.

(a) An accrediting agency that desires to be recognized by the Secretary under this part shall apply in writing to the United States Department of Education, Office of Postsecondary Education, Washington, DC 20202.

(b) For initial recognition and for renewal of recognition, the accrediting agency will furnish information establishing its compliance with the criteria set forth in Subpart B by the submission of written materials and by affording the Secretary access to the agency's accreditation site visits and proceedings.

(c) To the extent that the documentation submitted by an agency under paragraph (b) of this section does not demonstrate to the satisfaction of the Secretary that the agency meets one or more of the criteria in Subpart B, an agency nonetheless wishing to be recognized shall, at the Secretary's request—

(1) Make its personnel available for interviews; and

(2) Submit additional records and information.

(d) The Secretary does not deny or withdraw recognition of an agency, or limit recognition of an agency to a scope narrower than that requested, without first giving the agency an opportunity to show cause why that action should not be taken.

(e) The Secretary re-evaluates each recognized agency at the Secretary's discretion, but at least once every five years.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.4 Participation of National Advisory Committee.

In making determinations under this part, the Secretary considers the recommendations of the National Advisory Committee on Accreditation and Institutional Eligibility.

(Authority: 20 U.S.C. 1058 *et al.*, 1145)

§ 602.5 Publication of list of recognized agencies.

The Secretary periodically publishes in the FEDERAL REGISTER a list of recognized agencies, including the scope of recognition of each agency.

(Authority: 20 U.S.C. 1058 *et al.*)

Subpart B—Criteria for Secretarial Recognition

§ 602.10 Criteria for recognition.

(a) The Secretary recognizes an accrediting agency only if the Secretary determines that the agency is a reliable authority as to the quality of the education or training offered by postsecondary educational institutions or programs within the agency's scope of activity, taking into account the degrees or certificates offered and the education or specific occupational training offered. In making this determination, the Secretary decides whether the agency possesses the characteristics and follows the procedures described in this subpart.

(b) To be recognized by the Secretary, an agency must satisfactorily meet each of the criteria in §§ 602.11—602.19 unless it can demonstrate to the Secretary's satisfaction why one or more criteria should not appropriately be applied.

(c) For purposes of the determination in paragraph (b) of this section, each section, taken as a whole, constitutes a criterion.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.11 Experience.

An accrediting agency must demonstrate sufficient experience with respect to both—

(a) The geographical scope of activity for which it seeks recognition; and

(b) The specific degress, certificates, and programs which would be covered by its recognized accreditation and preaccreditation activities.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.12 Scope of activity.

The Secretary determines whether an accrediting agency—

(a) (1) Is national in the scope of its operation; or

(2) Includes in its geographical scope of operation at least three States that are contiguous or that otherwise constitute a distinct geographic region, and defines its accrediting activity as the accreditation of entire institutions; and

(b) Accredits types and academic levels of institutions or programs that must be accredited by an accrediting agency recognized by the Secretary in order for those institutions or programs, or their students, to be eligible for participation in one or more Federal programs.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.13 Clarity of purpose, scope, and operational information.

The Secretary determines whether an accrediting agency maintains, and makes publicly avaliable, current written material clearly describing each of the following matters:

(a) Its purposes and objectives.

(b) The geographical area and the types and academic levels of educational institutions or programs covered by the agency's accrediting activity.

(c) The definition of each type of accreditation and preaccreditation status, including probationary status, if any, that the agency grants.

(d) The criteria and procedures used by the agency for determining whether to grant, reaffirm, reinstate, deny, restrict, or revoke each type of accreditation and preaccreditation status that the agency grants.

(e) The standards to which an agency holds an educational institution or program for the purpose of making determinations respecting each of the criteria referred to in paragraph (d) of this section.

(f) The procedures established by the agency for appeal of its denials or withdrawals of accreditation or preaccreditation status.

(g) The procedures followed by the agency for the timely review of complaints pertaining to institutional or program quality, as these relate to the agency's criteria, in a manner that is fair and equitable to the person making the complaint and to the institution or program.

(h) The current accreditation or preaccreditation status publicly conferred on each educational institution or program within the agency's scope of operation, and the date of the next currently scheduled review or reconsideration of accreditation of each of those institutions or programs.

(i) The names and relevant employment and organizational affiliations of the members of the agency's policy and decision-making bodies responsible for the agency's accrediting activities, and the names of the agency's principal administrative staff.

(j) Provisions for the inclusion of representatives of the public in its policy and decision-making bodies, responsible for its accrediting activities or for the retention of advisors who can provide information about issues of concern to the public.

(k) With regard to institutions or programs of study that admit students on the basis of their ability to benefit from the education or training offered, any criteria established by the agency with respect to nationally recognized, standardized, or industry-developed tests designed to measure the aptitude of prospective students to complete successfully the program to which they have applied.

(Authority: 29 U.S.C. 1058 *et al.* and 1091(d))

§ 602.14 National recognition.

The Secretary determines whether an accrediting agency demonstrates that its policies, evaluation methods and decisions are accepted throughout the United States by, as appropriate—

(a) Educators and educational institutions;

(b) Licensing bodies; practitioners, and employers in the professional or vocational fields for which the educational institutions or program within the agency's jurisdiction prepare their students; and

(c) Recognized agencies.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.15 Resources.

The Secretary determines whether an accrediting agency has, and will be likely to have sufficient resources to carry out its accreditation function in light of its requested scope of recognition, including—

(a) Administrative staff and financial resources; and

(b) Competent and knowledgeable personnel responsible for on-site evaluation, policy-making and decisions regarding accreditation and preaccreditation status.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.16 Integrity of process.

The Secretary determines whether an accrediting agency adheres to the following practices and procedures in making its determinations concerning accreditation and preaccreditation status:

(a) As an integral part of its accrediting activity, it—

(1) Requires self-analysis by each subject educational institution or program in accordance with guidance provided by the agency; and

(2) Conducts an on-site review of the institution or program, conducts its own independent analyses and evaluations of the data furnished by the institution or program, and provides a written report on the review to the institution or program concerning—

(i) The strengths and weaknesses of the institution or program (both at the main campus and branch campus or off-campus locations), including areas needing improvement; and

(ii) The institution's or program's performance respecting the assessment of student achievement as described in § 602.17.

(b) It re-evaluates at reasonable intervals the institutions or programs to which it has granted accreditation or preaccreditation status.

(c) It bases its decisions regarding the award of accreditation or preaccreditation status upon its published criteria and provides advance public notice of proposed new or revised criteria, providing interested parties adequate opportunity to comment on such proposals prior to their adoption.

(d) With regard to the award of preaccreditation status, it applies criteria and follows procedures that are appropriately related to those used to award accreditation status.

(e) It offers appropriate and fair written procedures for appeals of its denial or withdrawal of accreditation or preaccreditation status. Such written procedures shall be made promptly available to the chief executive official of any institution or program affected by such a change in status.

(f) It maintains a written policy under which it notifies the Secretary wthin 30 days of any final decision—

(1) To withdraw accreditation or preaccreditation status from an institution or program; or

(2) To place an accredited or preaccredited institution or program on a publicly announced probationary status.

(g) Its organization, functions, and procedures include effective controls against conflicts of interest and against inconsistent application of its criteria and standards.

(h) If the institution or program elects to make public disclosure of its status, it requires that each institution or program to which it has granted accreditation or preaccreditation status disclose that status accurately, including the academic or instructional programs covered by that status.

(i) It maintains a systematic program of review designed to assess the validity and reliability of its criteria, procedures, and standards relating to its accrediting and preaccrediting activity and their relevance to the educational and training needs of affected students.

(j) It maintains complete and accurate records of its last two reviews of each institution or program, and accurate permanent records of its decisions with respect to preaccreditation, accreditation, and adverse actions.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.17 Focus on educational effectiveness.

The Secretary determines whether an accrediting agency, in making its accrediting decisions, systematically obtains and considers substantial and accurate information on the educational effectiveness of postsecondary educational institutions or programs, especially as measured by student achievement, by—

(a) Determining whether an educational institution or program maintains clearly specified educational objectives consistent with its mission and appropirate in light of the degrees or certificates it awards;

(b) Verifying that satisfaction of certificate and degree requirements by all students, including students admitted on the basis of ability to benefit, is reasonably documented, and conforms with commonly accepted standards for the particular certificates and degrees involved, and that institutions or programs confer degrees only on those students who have demonstrated educational achievement as assessed and documented through appropriate measures;

(c) Determining that institutions or programs document the educational achievements of their students, including students admitted on the basis of ability to benefit, in verifiable and consistent ways, such as evaluation of senior theses, reviews of student portfolios, general educational assessments (e.g., standardized test results, graduate or professional school test results, or graduate or professional school placements), job placement rates, licensing examination results, employer evaluations, and other recognized measures;

(d) Determining that institutions or programs admitting students on the basis of ability to benefit employ appropriate methods, such as preadmissions testing or evaluations, for determining that such students are in fact capable of benefiting from the training or education offered;

(e) Determining the extent to which institutions or programs broadly and accurately publicize, particularly in representations directed to prospective students, the objectives described in paragraph (a) of this section, the assessment measure described in paragraph (c) of this section, the information obtained through those measures, and the methods described in paragraph (d) of this section; and

(f) Determining the extent to which institutions or programs systematically apply the information obtained through the measures described in paragraph (c) of this section toward steps to foster enhanced student achievement with respect to the degrees or certificates offered by the institution or program.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.18 Regard for adequate and accurate public disclosure.

The Secretary determines whether an accrediting agency, in making its accrediting decisions, reviews elements of institutional or program integrity as demonstrated by the adequacy and accuracy of disclosures of information that do not mislead the public (and especially prospective students) as to—

(a) The institution's or program's resouces, admission policies and standards, academic offerings, policies with respect to satisfactory academic progress, fees and other charges, refund policies, and graduation rates and requirements;

(b) The institution's or program's educational effectiveness as described in § 602.17;

(c) Employment of recent alumni related to the education or training offered, in the case of an institution or program offering training to prepare students for gainful employment in a recognized occupation, or where the institution or program makes claims about the rate or type of employment of graduates; and

(d) Data supporting any quantitative claims made by the institution with respect to any matters described in paragraphs (a), (b) and (c) of this section.

(Authority: 20 U.S.C. 1058 *et al.*)

§ 602.19 Regard for decisions of States and other accrediting agencies.

The Secretary determines whether an accrediting agency, in making its decisions, shows regard for the decisions of States and of other recognized accrediting agencies by conforming with the following practices:

(a) Recognizing only those institutions or programs that are legally authorized under applicable State law to provide a program of education beyond secondary education.

(b) In considering whether to grant initial accreditation or preaccreditation status to an institution or program, taking into account actions by other recognized agencies which have denied accreditation or preaccreditation status to the institution or program, have placed the institution or program on public probationary status, or have revoked the accreditation or preaccreditation status of the institution or program.

(c) If another recognized agency places an institution or the principal program offered by an institution on public probationary status or revokes the accreditation of the institution or principal program within an institution, promptly reviewing the accreditation or preaccreditation status it has previously granted to that institution to determine if there is cause for it to withdraw or otherwise alter that status.

(Authority: 20 U.S.C. 1058 *et al.*)

PART 603—SECRETARY'S RECOGNITION PROCEDURES FOR STATE AGENCIES

Subpart A—[Reserved]

Subpart B—Criteria for State Agencies

603.20 Scope.
603.21 Publication of list.
603.22 Inclusion on list.
603.23 Initial recognition, and reevaluation.
603.24 Criteria for State agencies.

AUTHORITY: 20 U.S.C. 403(b), 1085(b), 1141(a), 1248(11); 42 U.S.C. 293a(b), 295f-3(b), 295h-4(1)(D), 298b(f); 38 U.S.C. 1775(a), unless otherwise noted.

SOURCE: 39 FR 30042, Aug. 20, 1974, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—[Reserved]

Subpart B—Criteria for State Agencies

AUTHORITY: Sec. 438(b) of the Higher Education Act of 1965, Pub. L. 89-329 as amended by Pub. L. 92-318, 86 Stat. 235, 264 (20 U.S.C. 1087-1(b)), unless otherwise noted.

SOURCE: 39 FR 30042, Aug. 20, 1974, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

§ 603.20 Scope.

(a) Pursuant to section 438(b) of the Higher Education Act of 1965 as amended by Pub. L. 92-318, the Secretary is required to publish a list of State agencies which he determines to be reliable authorities as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for Federal student assistance programs administered by the Department.

(b) Approval by a State agency included on the list will provide an alternative means of satisfying statutory standards as to the quality of public postsecondary vocational education to be undertaken by students receiving assistance under such programs.

(Authority: 20 U.S.C. 1087-1(b))

§ 603.21 Publication of list.

Periodically the Secretary will publish a list in the FEDERAL REGISTER of the State agencies which he determines to be reliable authorities as to the quality of public postsecondary vocational education in their respective States.

(Authority: 20 U.S.C. 1087-1(b))

§ 603.22 Inclusion on list.

Any State agency which desires to be listed by the Secretary as meeting the criteria set forth in § 603.24 should apply in writing to the Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, Department of Education, Washington, DC 20202.

(Authority: 20 U.S.C. 1087-1(b))

[45 FR 86300, Dec. 30, 1980]

§ 603.23 Initial recognition, and reevaluation.

For initial recognition and for renewal of recognition, the State agency will furnish information establishing its compliance with the criteria set forth in § 603.24. This information may be supplemented by personal interviews or by review of the agency's facilities, records, personnel qualifications, and administrative management. Each agency listed will be reevaluated by the Secretary at his discretion, but at least once every four years. No adverse decision will become final without affording an opportunity for a hearing.

(Authority: 20 U.S.C. 1087-1(b))

§ 603.24 Criteria for State agencies.

The following are the criteria which the Secretary will utilize in designating a State agency as a reliable authority to assess the quality of public postsecondary vocational education in its respective State.

(a) *Functional aspects.* The functional aspects of the State agency must be shown by:

(1) *Its scope of operations.* The agency:

(i) Is statewide in the scope of its operations and is legally authorized to approve public postsecondary vocational institutions or programs;

(ii) Clearly sets forth the scope of its objectives and activities, both as to kinds and levels of public postsecondary vocational institutions or programs covered, and the kinds of operations performed;

(iii) Delineates the process by which it differentiates among and approves programs of varying levels.

(2) *Its organization.* The State agency:

(i) Employs qualified personnel and uses sound procedures to carry out its operations in a timely and effective manner;

(ii) Receives adequate and timely financial support, as shown by its appropriations, to carry out its operations;

(iii) Selects competent and knowledgeable persons, qualified by experience and training, and selects such persons in accordance with nondiscriminatory practices, (A) to participate on visiting teams, (B) to engage in consultative services for the evaluation and approval process, and (C) to serve on decision-making bodies.

(3) *Its procedures.* The State agency:

(i) Maintains clear definitions of approval status and has developed written procedures for granting, reaffirming, revoking, denying, and reinstating approval status;

(ii) Requires, as an integral part of the approval and reapproval process, institutional or program self-analysis and onsite reviews by visiting teams, and provides written and consultative guidance to institutions or programs and visiting teams.

(A) Self-analysis shall be a qualitative assessment of the strengths and limitations of the instructional program, including the achievement of institutional or program objectives, and should involve a representative portion of the institution's administrative staff, teaching faculty, students, governing body, and other appropriate constituencies.

(B) The visiting team, which includes qualified examiners other than agency staff, reviews instructional content, methods and resources, administrative management, student services, and facilities. It prepares written reports and recommendations for use by the State agency.

(iii) Reevaluates at reasonable and regularly scheduled intervals institutions or programs which it has approved.

(b) *Responsibility and reliability.* The responsibility and reliability of the State agency will be demonstrated by:

(1) Its responsiveness to the public interest. The State agency:

(i) Has an advisory body which provides for representation from public employment services and employers, employees, postsecondary vocational educators, students, and the general public, including minority groups. Among its functions, this structure provides counsel to the State agency relating to the development of standards, operating procedures and policy, and interprets the educational needs and manpower projections of the State's public postsecondary vocational education system;

(ii) Demonstrates that the advisory body makes a real and meaningful contribution to the approval process;

(iii) Provides advance public notice of proposed or revised standards or regulations through its regular channels of communications, supplemented, if necessary, with direct communication to inform interested members of the affected community. In addition, it provides such persons the opportunity to comment on the standards or regulations prior to their adoption;

(iv) Secures sufficient qualitative information regarding the applicant institution or program to enable the institution or program to demonstrate that it has an ongoing program of evaluation of outputs consistent with its educational goals;

(v) Encourages experimental and innovative programs to the extent that these are conceived and implemented in a manner which ensures the quality and integrity of the institution or program;

(vi) Demonstrates that it approves only those institutions or programs which meet its published standards; that its standards, policies, and procedures are fairly applied; and that its evaluations are conducted and decisions are rendered under conditions that assure an impartial and objective judgment;

(vii) Regularly reviews its standards, policies and procedures in order that the evaluative process shall support constructive analysis, emphasize factors of critical importance, and reflect the educational and training needs of the student;

(viii) Performs no function that would be inconsistent with the formation of an independent judgment of the quality of an educational institution or program;

(ix) Has written procedures for the review of complaints pertaining to institutional or program quality as these relate to the agency's standards, and demonstrates that such procedures are adequate to provide timely treatment of such complaints in a manner fair and equitable to the complainant and to the institution or program;

(x) Annually makes available to the public (A) its policies for approval, (B) reports of its operations, and (C) list of institutions or programs which it has approved;

(xi) Requires each approved school or program to report on changes instituted to determine continued compliance with standards or regulations;

(xii) Confers regularly with counterpart agencies that have similar responsibilities in other and neighboring States about methods and techniques that may be used to meet those responsibilities.

(2) Its assurances that due process is accorded to institutions or programs seeking approval. The State agency:

(i) Provides for adequate discussion during the on-site visit between the visiting team and the faculty, administrative staff, students, and other appropriate persons;

(ii) Furnishes as a result of the evaluation visit, a written report to the institution or program commenting on areas of strength, areas needing improvement, and, when appropriate, suggesting means of improvement and including specific areas, if any, where the institution or program may not be in compliance with the agency's standards;

(iii) Provides the chief executive officer of the institution or program with opportunity to comment upon the written report and to file supplemental materials pertinent to the facts and conclusions in the written report of the visiting team before the agency takes action on the report;

(iv) Provides the chief executive officer of the institution with a specific statement of reasons for any adverse action, and notice of the right to appeal such action before an appeal body designated for that purpose;

(v) Publishes rules of procedure regarding appeals;

(vi) Continues the approval status of the institution or program pending disposition of an appeal;

(vii) Furnishes the chief executive officer of the institution or program with a written decision of the appeal body, including a statement of its reasons therefor.

(c) *Capacity to foster ethical practices.* The State agency must demonstrate its capability and willingness to foster ethical practices by showing that it:

(i) Promotes a well-defined set of ethical standards governing institutional or programmatic practices, including recruitment, advertising, transcripts, fair and equitable student tuition refunds, and student placement services;

(ii) Maintains appropriate review in relation to the ethical practices of each approved institution or program.

(Authority: 20 U.S.C. 1087-1(b))

PART 604—FEDERAL-STATE RELATIONSHIP AGREEMENTS

Subpart A—General

Sec.
604.1 Federal-State relationship agreements.
604.2 Regulations that apply to Federal-State relationship agreements.
604.3 Definitions that apply to Federal-State relationship agreements.

Subpart B—Federal-State Relationship Agreements

604.10 Administrative requirements.
604.11 Planning requirements.
604.12 Changes in the agreement.
604.13 Denial of eligibility.

AUTHORITY: Sec. 1203 of the Higher Education Act of 1965, as amended by Pub. L. 96-374 (20 U.S.C. 1143), unless otherwise noted.

SOURCE: 45 FR 83221, Dec. 18, 1980, unless otherwise noted.

Subpart A—General

§ 604.1 Federal-State relationship agreements.

(a) A State shall enter into an agreement with the Secretary if it wishes to participate in the following programs authorized by the Higher Education Act of 1965, as amended: The Continuing Education Outreach program, Title I-B, with the exception of sections 116 and 117 of the Act; the State Student Incentive Grant program, subpart 3 of Title IV-A of the Act; and the Undergraduate Academic Facilities Grant program, Title VII-A of the Act. The agreement must contain assurances relating to administration, financial management, treatment of applicants for subgrants and contracts, supplement, not supplant requirements, and planning. These assurances are listed in Subpart B of this part. The means by which these assurances will be met must also be described.

(b) The provisions of the agreement replace comparable provisions in annual plans previously required by each applicable program.

(Authority: 20 U.S.C. 1143)

§ 604.2 Regulations that apply to Federal-State relationship agreements.

The following regulations apply to Federal-State relationship agreements:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State Administered Programs) and 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 604

(Authority: 20 U.S.C. 1232(a))

§ 604.3 Definitions that apply to Federal-State relationship agreements.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Contract
Private
Public
Secretary
State
Subgrant

(b) *Definitions that apply to this part.* The following definitions apply to this part:

Act means the Higher Education Act of 1965, as amended.

Applicable programs means the Continuing Education Outreach program, the State Student Incentive Grant program, and the Undergraduate Academic Facilities Grant program.

(Authority: 20 U.S.C. 1143)

Subpart B—Federal-State Relationship Agreements

§ 604.10 Administrative requirements.

The agreement shall contain the following assurances and a description of the means by which they will be met:

(a) Management practices and procedures will assure proper and efficient administration of each applicable program. The description of these methods shall include the identification of the State entity or entities designated to administer each applicable program as well as the name of the responsible official.

(b) Appropriate fiscal control and fund accounting procedures will be provided for Federal funds received under all titles of the Act.

(c) Federal funds under the applicable programs will not supplant non-Federal funds.

(d) Equitable and appropriate criteria will be used in evaluating applications for subgrants or proposals for contracts under each applicable program.

(Authority: 20 U.S.C. 1143)

§ 604.11 Planning requirements.

(a) The agreement shall contain an assurance by the State that it has a comprehensive planning or policy formulation process which:

(1) Considers the relationship between State administration of each applicable program and administration of similar State programs or processes;

(2) Encourages State policies that consider the effects of declining enrollments on all sectors of postsecondary education within the State;

(3) Considers the postsecondary educational needs of unserved and underserved individuals within the State, including individuals beyond traditional college age;

(4) Considers the resources of public and private institutions, organizations, and agencies within the State that are capable of providing postsecondary educational opportunities; and

(5) Provides for direct, equitable, and active participation in the comprehensive planning or policy formulation processes by representatives of institutions of higher education—including community colleges, proprietary institutions, and independent colleges and universities—other providers of postsecondary education services, students, and the general public in the State.

(i) Participation shall be achieved through membership on State planning commissions, State advisory councils, or other State entities established by the State to conduct federally assisted comprehensive planning or policy formulation.

(ii) Participation shall be consistent with State law.

(b) The agreement shall include a description of the planning or policy formulation process through which these assurances will be fulfilled.

(Authority: 20 U.S.C. 1143)

§ 604.12 Changes in the agreement.

(a) The agreement shall remain in effect until substantial changes in administrative practices or planning processes would require its modification.

(b) Routine organizational or personnel changes are not subject to prior modification of the agreement, but information concerning these changes shall be promptly communicated to the Secretary.

(Authority: 20 U.S.C. 1143)

§ 604.13 Denial of eligibility.

(a) If the Secretary finds that there is a failure to comply substantially with the assurances of § 604.10 then the Secretary, after giving a State reasonable notice and the opportunity for a hearing, shall notify the State that it is ineligible to participate in any applicable program.

(b) To regain eligibility, a State must satisfy the Secretary that the failure to comply has been remedied.

(Authority: 20 U.S.C. 1143)

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

Subpart A—General

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607.3 What is an enrollment of needy students?
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607.21 What are the selection criteria for planning grants?
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607.30 What are allowable costs and what are the limitations on allowable costs?
607.31 How does a grantee maintain its eligibility?

Authority: 20 U.S.C. 1057-1059, 1066-1069f, unless otherwise noted.

Source: 52 FR 30529, Aug. 14, 1987, unless otherwise noted.

Subpart A—General

§ 607.1 What is the Strengthening Institutions Program?

The purpose of the Strengthening Institutions Program is to provide grants to eligible institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability in order to increase their self-sufficiency, and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

(Authority: 20 U.S.C. 1057)

§ 607.2 What institutions are eligible to receive a grant under the Strengthening Institutions Program?

(a) Except as provided in paragraphs (b), (c), (d), and (f) of this section, an institution of higher education is eligible to receive a grant under the Strengthening Institutions Program if—

(1) It has an enrollment of needy students as described in § 607.3(a), unless the Secretary waives this requirement under § 607.3(b);

(2) It has low average educational and general expenditures per full-time equivalent undergraduate student as described in § 607.4(a), unless the Secretary waives this requirement under § 607.4(c);

(3) It is legally authorized by the State in which it is located to be a junior college or to provide an educa-

tional program for which it awards a bachelor's degree;

(4) It is accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered; and

(5) It has satisfied the requirements contained in paragraphs (a)(3) and (a)(4) of this section for the five academic years preceding the academic year for which it initially seeks a grant under this part.

(b) An institution of higher education is eligible to receive a grant under the Strengthening Institutions Program even if it does not satisfy the requirements of paragraph (a)(5) of this section if its student enrollment consists of at least—

(1) Twenty percent Mexican American, Puerto Rican, Cuban, or other Hispanic students, or any combination thereof;

(2) Five percent Native Hawaiian, Asian American, American Samoan, Micronesian, Guamian (Chamorro), or Northern Marianian or any combination thereof; or

(3) Sixty percent American Indian, or in the case of Alaska natives, an enrollment of at least 5 percent Alaska natives.

(c) The Secretary may waive the requirements of paragraph (a)(5) of this section in the case of an institution located on or near an Indian reservation or a substantial population of Indians, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of American Indians.

(d) A branch campus of an institution of higher education, if the institution as a whole meets the requirements of paragraphs (a)(1) through (5) of this section, is eligible to receive a grant under the Strengthening Institutions Program even if, by itself, it does not satisfy the requirements of paragraphs (a)(3), (a)(4) and (a)(5) of this section, although the branch must meet the requirements of paragraphs (a)(1) and (a)(2) of this section.

(e) For the purpose of paragraphs (b) and (c) of this section, an institution's enrollment consists of a head count of its entire student body.

(f) An institution that qualifies for a grant under the Strengthening Historically Black Colleges and Universities Program (34 CFR Part 608) and receives a grant under that program for a particular fiscal year is not eligible to receive a grant under the Strengthening Institutions Program for that same fiscal year.

(Authority: 20 U.S.C. 1058)

[52 FR 30529, Aug. 14, 1987, as amended at 54 FR 11481, Mar. 20, 1989]

§ 607.3 What is an enrollment of needy students?

(a) Except as provided in paragraph (b) of this section, for the purpose of § 607.2(a)(1), an applicant institution has an enrollment of needy students if in the base year—

(1) At least 50 percent of its degree students received student financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, and Perkins Loan; or

(2) The percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction.

(b) The Secretary waives the requirement contained in paragraph (a) of this section if the institution demonstrates that—

(1) The State provides more than 30 percent of the institution's budget and the institution charges not more than $99.00 for tuition and fees for an academic year;

(2) At least 30 percent of the students served by the institution in the base year were students from low-income families;

(3) The institution substantially increases the higher education opportunities for low-income students who are also educationally disadvantaged, underrepresented in postsecondary education, or minority students;

(4) The institution substantially increases the higher education opportunities for individuals who reside in an area that is not included in a "metropolitan statistical area" as defined by the Office of Management and Budget and who are unserved by other postsecondary institutions;

(5) The institution is located on or within 50 miles of an Indian reservation, or a substantial population of Indians and the institution will, if granted the waiver, substantially increase higher education opportunities for American Indians; or

(6) The institution will, if granted the waiver, substantially increase the higher education opportunities for Black Americans, Hispanic Americans, Native Americans, Asian Americans or Pacific Islanders, including Native Hawaiians.

(c) For the purpose of paragraph (b) of this section, the Secretary considers "low-income" to be an amount which does not exceed 150 percent of the amount equal to the poverty level as established by the United States Bureau of the Census.

(d) Each year, the Secretary notifies prospective applicants through a notice in the FEDERAL REGISTER of the low-income figures.

(Authority: 20 U.S.C. 1058 and 1067)

§ 607.4 What are low educational and general expenditures?

(a)(1) Except as provided in paragraph (b) of this section, for the purpose of § 607.2(a)(2), an applicant institution's average educational and general expenditures per full-time equivalent undergraduate student in the base year must be less than the average educational and general expenditures per full-time equivalent undergraduate student of comparable institutions that offer similar instruction in that year.

(2) For the purpose of paragraph (a)(1) of this section, the Secretary determines the average E&G per FTE undergraduate student for institutions with graduate students that do not differentiate between graduate and undergraduate E&G expenditures by discounting the graduate enrollment using a factor of 2.5 times the number of graduate students.

(b) Each year, the Secretary notifies prospective applicants through a notice in the FEDERAL REGISTER of the average educational and general expenditures per full-time equivalent undergraduate student at comparable institutions that offer similar instruction.

(c) The Secretary may waive the requirement contained in paragraph (a) of this section, if the Secretary determines, based upon persuasive evidence provided by the institution, that—

(1) The institution's failure to satisfy the criteria in paragraph (a) of this section was due to factors which, if used in determining compliance with those criteria, distorted that determination; and

(2) The institution's designation as an eligible institution under this part is otherwise consistent with the purposes of this part.

(d) For the purpose of paragraph (c)(1) of this section, the Secretary considers that the following factors may distort an institution's educational and general expenditures per full-time equivalent undergraduate student—

(1) Low student enrollment;

(2) Location of the institution in an unusually high cost-of-living area;

(3) High energy costs;

(4) An increase in State funding that was part of a desegregation plan for higher education; or

(5) Operation of high cost professional schools such as medical or dental schools.

(Authority: 20 U.S.C. 1058 and 1067)

§ 607.5 How does an institution apply to be designated an eligible institution?

An institution shall apply to the Secretary to be designated an eligible institution under the Strengthening Institutions Program by submitting an application to the Secretary in the form, manner and time established by the Secretary. The application must contain—

(a) The information necessary for the Secretary to determine whether the institution satisfies the requirements of § 607.2, § 607.3(a) and § 607.4(a);

(b) Any waiver request under § 607.3(b) and § 607.4(c); and

(c) Information or explanations justifying any requested waiver.

(Authority: 20 U.S.C. 1058 and 1067)

§ 607.6 What regulations apply?

The following regulations apply to the Strengthening Institutions Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants); Part 75 (Direct Grant Programs), except 34 CFR 75.128(a)(2) and 75.129(a) in the case of applications under cooperative arrangements; Part 77 (Definitions That Apply to Department Regulations; and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulation in this part.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1057, 1060, 1064)

[52 FR 30529, Aug. 14, 1987, as amended at 55 FR 21715, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21715, May 25, 1990, § 607.6(a) is amended by removing "Regulations; and Part 78 (Education Appeal Board)." and adding in their place "Regulations; and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).", effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 607.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms that apply to the Institutional Aid Programs are defined in 34 CFR 77.1:

EDGAR
Fiscal year
Grant
Grantee
Grant period
Nonprofit
Private
Project
Project period
Public
Secretary
State

(b) The following definitions also apply to this part:

Accredited means the status of public recognition which a nationally recognized accrediting agency or association grants to an institution which meets certain established qualifications and educational standards.

Activity means an action or actions which are incorporated into an implementation plan designed to meet an objective. An activity is a subpart of a project.

Base year means the second fiscal year preceding the fiscal year for which an institution seeks a grant under this part.

Branch campus means a unit of a college or university that is geographically apart from the main campus of the college or university and independent of that main campus. The Secretary considers a unit of a college or university to be independent of the main campus if the unit—

(1) Is permanent in nature;

(2) Offers courses for credit and programs leading to an associate or bachelor's degree; and

(3) Is autonomous to the extent that it has—

(i) Its own faculty and administrative or supervisory organization; and

(ii) Its own budgetary and hiring authority.

College Work-Study Program means the part-time employment program authorized under Title IV-C of the HEA.

Comparable institutions that offer similar instruction means institutions that are being compared with an applicant institution and that fall within one of the following four categories—

(1) Public junior or community colleges;

(2) Private nonprofit junior or community colleges;

(3) Public institutions that offer an educational program for which they offer a bachelor's degree; or

(4) Private nonprofit institutions that offer an educational program for which they offer a bachelor's degree.

Cooperative arrangement means an arrangement to carry out allowable grant activities between an institution eligible to receive a grant under this part and another eligible or ineligible institution of higher education, under which the resources of the cooperating institutions are combined and shared to better achieve the purposes of this part and avoid costly duplication of effort.

Degree student means a student who enrolls at an institution for the purpose of obtaining the degree, certificate, or other recognized educational credential offered by that institution.

Developmental program and services means new or improved programs and services, beyond those regularly budgeted, specifically designed to improve the self sufficiency of the school.

Educational and general expenditures means the total amount expended by an institution of higher education for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation and maintenance expenditures for the physical plant, and any mandatory transfers which the institution is required to pay by law.

Full-time equivalent students means the sum of the number of students enrolled full-time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

HEA means the Higher Education Act of 1965, as amended.

Institution of higher education means an educational institution defined in section 1201(a) of the HEA.

Junior or community college means an institution of higher education—

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which it awards a bachelor's degree (or an equivalent degree); and

(3) That—

(i) Provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree, or

(ii) Offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

Nationally recognized accrediting agency or association means an accrediting agency or association that the Secretary has recognized to accredit or preaccredit a particular category of institution in accordance with the provisions contained in 34 CFR Part 603. The Secretary periodically publishes a list of those nationally recognized accrediting agencies and associations in the FEDERAL REGISTER.

Operational programs and services means the regular, ongoing budgeted programs and services at an institution.

Pell Grant Program means the grant program authorized by Title IV-A-1 of the HEA.

Perkins Loan Program, formerly called the National Direct Student Loan Program, means the loan program authorized by Title IV-E of the HEA.

Preaccredited means a status that a nationally recognized accrediting agency or association, recognized by the Secretary to grant that status, has accorded an unaccredited institution that is progressing toward accreditation within a reasonable period of time.

Project means all the funded activities under a grant.

Self-sufficiency means the point at which an institution is able to survive without continued funding under the Strengthening Institutions Program.

Special Needs Program means the program authorized by Part B of Title III of the HEA before Part B was amended by the Higher Education Amendments of 1986.

Strengthening Program means the program authorized by Part A of Title III of the HEA before Part A was amended by the Higher Education Amendments of 1986.

Supplemental Education Opportunity Grant means the grant program authorized by Title IV A-2 of the HEA.

(Authority: 20 U.S.C. 1051, 1057-1059 and 1066-1069f)

§ 607.8 What is a comprehensive development plan and what must it contain?

(a) A comprehensive development plan describes an institution's strategy for achieving growth and self-sufficiency by strengthening its—

(1) Academic quality;

(2) Institutional management; and

(3) Fiscal stability.

(b) The comprehensive development plan must include the following—

(1) The institutional mission statement, i.e. a broad statement of purpose, which identifies certain of its distinguishing characteristics, including the characteristics of the students it proposes to serve and the programs of study it proposes to offer.

(2) Assumptions concerning the institutional environment, enrollment trends and economic factors which affect the institution;

(3) Major problems or deficiencies that inhibit the institution from becoming self-sufficient;

(4) Long-range and short-range goals that will chart the growth and development of the institution and address the problems identified under paragraph (b)(3) of this section;

(5) Measurable objectives related to reaching each goal;

(6) Priorities for implementing improvements or corrective actions and for allocating resources to achieve these goals and objectives;

(7) Timeframes for achieving the goals and objectives described in paragraphs (b)(5) and (b)(6) of this section;

(8) Major resource requirements necessary to achieve the goals and objectives of the plan, including personnel, financial, equipment and facilities; and

(9) Strategies and resources for objectively evaluating the institution's progress towards, and success in, achieving its goals and objectives.

(Approved by the Office of Management and Budget under control number 1840-0114)

(Authority: 20 U.S.C. 1066)

[52 FR 30529, Aug. 14, 1987, as amended at 53 FR 49146, Dec. 6, 1988]

§ 607.9 What are the type, duration and limitations in the awarding of grants under this part?

(a)(1) Under this part, the Secretary may award planning grants and two types of development grants, individual development grants and cooperative arrangement development grants.

(2) Planning grants may be awarded for a period not to exceed one year.

(3) Either type of development grant may be awarded for a period of one through five years.

(b)(1) An institution that receives a planning grant may not subsequently receive another planning grant but may subsequently receive a development grant after its planning grant expires.

(2) An institution that receives a development grant of up to three years may subsequently receive another development grant after its development grant expires.

(3) An institution that receives a development grant of four years may not subsequently receive another development grant for a period of eight years from the date it received the four year grant.

(4) An institution that receives a development grant of five years may not subsequently receive another development grant for a period of ten years from the date it received the five year grant.

(Authority: 20 U.S.C. 1059)

§ 607.10 What activities may and may not be carried out under a grant?

(a) *Planning grants.* Under a planning grant, a grantee shall formulate—

(1) A comprehensive development plan described in § 607.8; and

(2) An application for a development grant.

(b) *Development grants—allowable activities.* Under a development grant, except as provided in paragraph (c) of this section, a grantee shall carry out activities that implement its comprehensive development plan and hold promise for strengthening the institution. Activities that may be carried out include, but are not limited to—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening management and academic programs;

(5) Joint use of facilities such as libraries and laboratories; and

(6) Student services.

(c) *Development grants—unallowable activities.* A grantee may not carry out the following activities under a development grant:

(1) Activities that are not included in the grantee's approved application;

(2) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;

(3) Activities that are inconsistent with a State plan for desegregation of higher education that is applicable to the institution;

(4) Activities or services that relate to sectarian instruction or religious worship;

(5) Activities provided by a school or department of divinity. For the purpose of this provision, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects;

(6) Development or improvement of nondegree or noncredit courses other than basic skills development courses;

(7) Development or improvement of community-based or community services programs, unless the program provides academic-related experiences or academic credit toward a degree for degree students;

(8) Replacement or upgrading of standard office equipment such as furniture, file cabinets, bookcases, typewriters or word processors;

(9) Services to high school students;

(10) Instruction in the institution's standard courses as indicated in the institution's catalog;

(11) Student activities such as entertainment, cultural, or social enrichment programs, publications or social clubs or associations; and

(12) Activities which are operational in nature rather than developmental.

(Authority: 20 U.S.C. 1057 and 1069c)

Subpart B—How Does an Institution Apply for a Grant?

§ 607.11 What must be included in individual development grant applications?

In addition to the information needed by the Secretary to determine whether the institution should be awarded a grant under the funding criteria contained in Subpart C, an application for a development grant must include—

(a) The institution's comprehensive development plan;

(b) A description of the relationship of each activity for which grant funds are requested to the relevant goals and objectives of its plan; and

(c) A description of any activities that were funded under previous Strengthening or Special Needs Program grants and the institution's justification for not completing the activities under the previous grant, if grant funds are requested to continue or complete the activities;

(d) The provisions required by section 351 of the HEA which are not specified in other sections of this part. These provisions require that an institution applying for more than one activity shall—

(1) Identify those activities that would be a sound investment of Federal funds if funded separately;

(2) Identify those activities that would be a sound investment of Federal funds only if funded with the other activities; and

(3) Rank the activities in preferred funding order.

(Approved by the Office of Management and Budget under control number 1840-0114)

(Authority: 20 U.S.C. 1066)

§ 607.12 What must be included in cooperative arrangement grant applications?

(a)(1) Institutions applying for a cooperative arrangement grant shall submit only one application for that grant regardless of the number of institutions participating in the cooperative arrangement.

(2) The application must include the names of each participating institution, the role of each institution, and the rationale for each eligible participating institution's decision to request grant funds as part of a cooperative arrangement rather than as an individual grantee.

(b) If the application is for a development grant, the application must contain—

(1) Each participating institution's comprehensive development plan;

(2) The information required under § 607.11; and

(3) An explanation from each eligible participating institution of why participation in a cooperative arrangement grant rather than performance under an individual grant will better enable it to meet the goals and objectives of its comprehensive development plan at a lower cost.

Approved by the Office of Management and Budget under control number 1840-0114)

Authority: 20 U.S.C. 1066 and 1069)

§ 607.13 How many applications for a development grant may an institution submit?

An institution of higher education may—

(a) Submit only one application for an individual development grant; and

(b) Be part of only one cooperative arrangement application.

Authority: 20 U.S.C. 1057-1059, 1066-1069f)

Subpart C—How Does the Secretary Make an Award?

607.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the selection criteria in—

(1) Section 607.21 for a planning rant;

(2) Section 607.22 for a development rant, and;

(3) Section 607.23 with regard to special funding considerations.

(b)(1) The Secretary awards up to 00 points for the criteria in § 607.21, up to 100 points for the criteria in §607.22, up to two additional points for the criteria in § 607.23(a) and up to three additional points for the criteria in § 607.23(b).

(2) The maximum possible score for each complete criterion is in parentheses following the title of that criterion.

(c)(1) The Secretary does not fund an application for a planning grant that scores less than 50 points under § 607.21; and

(2) The Secretary does not fund an application for a development grant that—

(i) Scores less than 50 points under § 607.22;

(ii) Is submitted without a comprehensive development plan;

(iii) Is submitted with a comprehensive development plan that does not satisfy all the elements required of such a plan under § 607.8; or

(iv) In the case of an application for a cooperative arrangement grant, does not demonstrate that funding the cooperative arrangement grant will enable each eligible participant to meet the goals and objectives of its comprehensive development plan better and at a lower cost than if each eligible participant were funded individually.

(Authority: 20 U.S.C. 1057-1059, 1066-1069f)

§ 607.21 What are the selection criteria for planning grants?

The Secretary uses the following criteria to evaluate an application to determine whether the applicant will produce a good comprehensive development plan and a fundable Strengthening Institutions Program application:

(a) *Design of the planning process.* (Total: 60 points) The Secretary reviews each application to determine the quality of the planning process that the applicant will use to develop a comprehensive development plan and an application for a development grant based on the extent to which—

(1) The planning process is clearly and comprehensively described and based on sound planning practice (15 points);

(2) The president or chief executive officer, administrators and other insti-

tutional personnel, students, and governing board members systematically and consistently will be involved in the planning process (15 points);

(3) The applicant will use its own resources to help implement the project (10 points); and

(4) The planning process is likely to achieve its intended results (20 points).

(b) *Key personnel.* (Total: 20 points) The Secretary reviews each application to determine the quality of key personnel to be involved in the project based on the extent to which—

(1) The past experience and training of key personnel such as the project coordinator and persons who have key roles in the planning process are suitable to the tasks to be performed (10 points); and

(2) The time commitments of key personnel are adequate (10 points).

(c) *Project Management.* (Total: 15 points) The Secretary reviews each application to determine the quality of the plan to manage the project effectively based on the extent to which—

(1) The procedures for managing the project are likely to ensure effective and efficient project implementation (10 points); and

(2) The project coordinator has sufficient authority, including access to the president or chief executive officer, to conduct the project effectively (5 points).

(d) *Budget.* (Total: 5 points) The Secretary reviews each application to determine the extent to which the proposed project costs are necessary and reasonable.

(Approved by the Office of Management and Budget under control number 1840-0114)

(Authority: 20 U.S.C. 1057-1059, 1066-1069)

§ 607.22 What are the selection criteria for development grants?

The Secretary uses the following criteria to evaluate applications for development grants:

(a) *Quality of the applicant's comprehensive development plan (CDP)* (Total: 25 points) The extent to which the implementation of the applicant's comprehensive development plan will strengthen the applicant's academic quality, institutional management, fiscal stability and otherwise provide for institutional growth and self-sufficiency.

(b) *Quality of project objectives.* (Total: 10 points) The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results (5 points); and

(2) Directly related to the problems to be solved and to the goals of the CDP (5 points).

(c) *Quality of implementation strategy.* (Total: 30 points) The extent to which an applicant's—

(1) Implementation strategy for each activity is comprehensive, based on a sound rationale, and likely to be effective (25 points); and

(2) Timetable for each activity is realistic (5 points).

(d) *Quality of key personnel.* (Total: 10 points) The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity purposes and objectives (7 points); and

(2) The time commitment of key personnel is realistic (3 points).

(e) *Quality of project management plan.* (Total: 10 points) The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation (5 points); and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively including access to the president or chief executive officer. (5 points).

(f) *Quality of evaluation plan.* (Total: 5 points) The extent to which the evaluation plan—

(1) Includes the information in § 607.8(b)(9); and

(2) Is likely to produce a valid assessment of the implementation strategy and quantifiable evidence of the attainment of objectives for each activity.

(g) *Budget.* (Total: 10 points) The extent to which the proposed costs are necessary and reasonable in relation to the project objectives and scope.

(Approved by the Office of Management and Budget under control number 1840-0114)

(Authority: 20 U.S.C. 1057-1059, 1066-1069f)

§ 607.23 What special funding consideration does the Secretary provide?

(a) If funds are available to fund only one additional planning grant and each of the next fundable applications has received the same number of points under § 607.21, the Secretary awards additional points, up to a maximum of two points, to any of those applicants that—

(1) Has an endowment fund of which the current market value, per full-time equivalent enrolled student, is less than the average current market value of the endowment funds, per full-time equivalent enrolled student, at similar type institutions; (one point) or

(2) Has expenditures for library materials per full-time equivalent enrolled student which is less than the average expenditure for library materials per full-time equivalent enrolled student at similar type institutions. (one point)

(b) If funds are available to fund only one additional development grant and each of the next fundable applications has received the same number of points under § 607.22, the Secretary will award additional points, up to a maximum of three points, to any of those applicants that—

(1) Has an endowment fund of which the current market value, per full-time equivalent enrolled student, is less than the average current market value of the endowment funds, per full-time equivalent enrolled student, at comparable institutions that offer similar instruction; (one point)

(2) Has expenditures for library materials per full-time equivalent enrolled student which is less than the average expenditure for library materials per full-time equivalent enrolled student at comparable institutions that offer similar instruction (one point); or

(3) Propose to carry out one or more of the following activities—

(i) Faculty development;

(ii) Funds and administrative management;

(iii) Development and improvement of academic programs;

(iv) Acquisition of equipment for use in strengthening management and academic programs;

(v) Joint use of facilities; and

(vi) Student services. (one point)

(c) Among applications submitted to carry out cooperative arrangement grants, the Secretary gives priority to those applications where the cooperative arrangement is geographically and economically sound or will benefit the applicant.

(d) As used in this section, an endowment fund does not include any fund established or supported under 34 CFR Part 628.

(e) Each year, the Secretary provides prospective applicants with the average expenditure of endowment funds and library materials per full-time equivalent student.

(Authority: 20 U.S.C. 1057 and 1069)

Subpart D—What Conditions Must a Grantee Meet?

§ 607.30 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraphs (b) and (c) of this section, a grantee may expend grant funds for activities that are related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1057-1059 and 1066)

§ 607.31 How does a grantee maintain its eligibility?

(a) A grantee must maintain its eligibility under the requirements contained in § 607.2, other than § 607.2(a)(1) and § 607.2(a)(2), for the duration of the grant period.

(b) An institution that receives a grant for more than one year shall annually submit to the Secretary an assurance that it continues to meet the eligibility requirements described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1057-1059, 1066-1069f)

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

Subpart A—General

Sec.
608.1 What is the Strengthening Historically Black Colleges and Universities (HBCU) Program?
608.2 What institutions are eligible to receive a grant under the HBCU Program?
608.3 What regulations apply?
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Subpart B—What Kind of Projects Does the Secretary Fund?

608.10 What activities may be carried out under a grant?
608.11 What is the duration of a grant?

Subpart C—How Does an Eligible Institution Apply for a Grant?

608.20 What are the application requirements for a grant under this part?

Subpart D—How Does the Secretary Make a Grant?

608.30 What is the procedure for approving and disapproving grant applications?
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Subpart E—What Conditions Must a Grantee Meet?

608.40 What are allowable costs and what are the limitations on allowable costs?
608.41 What are the audit and repayment requirements?
608.42 Under what conditions does the Secretary terminate a grant?

AUTHORITY: 20 U.S.C. 1060 through 1063a, 1063c and 1069c, unless otherwise noted.

SOURCE: 52 FR 30538, Aug. 14, 1987, unless otherwise noted.

Subpart A—General

§ 608.1 What Is the Strengthening Historically Black Colleges and Universities (HBCU) Program?

The Strengthening Historically Black Colleges and Universities Program, hereafter called the HBCU Program, provides grants to Historically Black Colleges and Universities (HBCUs) to assist these institutions in establishing and strengthening their physical plants, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity.

(Authority: 20 U.S.C. 1060)

§ 608.2 What Institutions Are Eligible To Receive a Grant Under the HBCU Program?

(a) To be eligible to receive a grant under this part, an institution of higher education must be Southern University at Shreveport or must—

(1) Be a historically black college or university;

(2) Have been established before 1964;

(3) Have a principal mission that was, and is, the education of Black Americans; and

(4) Be, and have been for five academic years preceding the academic year for which it seeks a grant under this part—

(i) Legally authorized by the State in which it is located to be a junior or community college or to provide an educational program for which it awards a bachelor's degree; and

(ii) Accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered.

(b) The Secretary has determined that the following institutions satisfy the requirements contained in paragraphs (a)(1) through (a)(3) of this section.

Alabama	
Alabama A & M University	Huntsville.
Alabama State University	Montgomery.

Carver State Technical College	Mobile.
Concordia College	Selma.
Fredd State Technical College	Tuscaloosa.
J.F. Drake State Technical College	Huntsville.
S.D. Bishop State Junior College	Mobile.
Lawson State College	Birmingham.
Miles College	Birmingham.
Oakwood College	Huntsville.
Selma University	Selma.
Stillman College	Tuscaloosa.
Talladega University	Talladega.
Trenholm State Technical College	Montgomery.
Tuskegee University	Tuskegee.

Arkansas

Arkansas Baptist College	Little Rock.
Philander Smith College	Little Rock.
Shorter College	Little Rock.
University of Arkansas at Pine Bluff	Pine Bluff.

Delaware

Delaware State College	Dover.

District of Columbia

Howard University	
University of the District of Columbia	

Florida

Bethune Cookman College	Daytona Beach.
Edward Waters College	Jacksonville.
Florida A & M University	Tallahassee.
Florida Memorial College	Miami.

Georgia

Albany State College	Albany.
Atlanta University	Atlanta.
Clark College	Atlanta.
Fort Valley State College	Fort Valley.
Interdenominational Theological Center.	Atlanta.
Morehouse College	Atlanta.
Morris Brown College	Atlanta.
Paine College	Augusta.
Savannah State College	Savannah.
Spelman College	Atlanta.

Kentucky

Kentucky State University	Frankfort.

Louisiana

Dillard University	New Orleans.
Grambling State University	Grambling.
Southern University A & M College	Baton Rouge.
Southern University at New Orleans	New Orleans.
Southern University at Shreveport	Shreveport.
Xavier University of Louisiana	New Orleans.

Maryland

Bowie State College	Bowie.
Coppin State College	Baltimore.
Morgan State University	Baltimore.
University of Maryland-Eastern Shore	Princess Anne.

Michigan

Lewis College of Business	Detroit.

Mississippi

Alcorn State University	Lorman.
Coahoma Junior College	Clarksdale.
Jackson State University	Jackson.
Mary Holmes College	West Point.
Mississippi Valley State University	Itta Bena.
Prentiss Normal and Industrial Institute.	Prentiss.
Rust College	Holly Springs.
Tougaloo College	Tougaloo.
Hinds Junior College (Utica Jr Coll)	Raymond.

Missouri

Lincoln University	Jefferson City.
Harris-Stowe State College	St. Louis.

North Carolina

Barber-Scotia College	Concord.
Bennett College	Greensboro.
Elizabeth City State University	Elizabeth City.
Fayetteville State University	Fayetteville.
Johnson C. Smith University	Charlotte.
Livingstone College	Salisbury.
North Carolina A & T State University.	Greensboro.
North Carolina Central University	Durham.
Saint Augustine's College	Raleigh.
Shaw University	Raleigh.
Winston-Salem State University	Winston Salem.

Ohio

Central State University	Wilberforce.
Wilberforce University	Wilberforce.

Oklahoma

Langston University	Langston.

Pennsylvania

Cheyney State University	Cheyney.
Lincoln University	Lincoln.

South Carolina

Allen University	Columbia.
Benedict College	Columbia.
Claflin College	Orangeburg.
Clinton Junior College	Rock Hill.
Denmark Technical College	Denmark.
Morris College	Sumter.
South Carolina State College	Orangeburg.
Voorhees College	Denmark.

Tennessee

Fisk University	Nashville.
Knoxville College	Knoxville.
Lane College	Jackson.
LeMoyne-Owen College	Memphis.
Meharry Medical College	Nashville.
Morristown College	Morristown.
Tennessee State University	Nashville.

Texas

Huston-Tillotson College	Austin.
Jarvis Christian College	Hawkins.
Paul Quinn College	Waco.
Prairie View A & M University	Prairie View.
Saint Philip's College	San Antonio.
Southwestern Christian College	Terrell.
Texas College	Tyler.
Texas Southern University	Houston.
Wiley College	Marshall.

U.S. Virgin Islands

College of the Virgin Islands	St. Thomas.

Virginia

Hampton University	Hampton.
Norfolk State University	Norfolk.
Saint Paul's College	Lawrenceville.
Virginia State University	Petersburg.
Virginia Union University	Richmond.

West Virginia

Bluefield State College	Bluefield.
West Virginia State College	Institute.

(c) If an institution has merged with another institution, and, as a result of the merger, would not otherwise qualify to receive a grant under this part, that institution may nevertheless qualify to receive a grant under this part if—

(1) The institution would have qualified to receive a grant before the merger; and

(2) The institution was eligible to receive a grant under the Special Needs Program in any fiscal year prior to fiscal year 1986.

(d) For the purpose of paragraph (a)(4)(ii) of this section, the Secretary publishes a list in the FEDERAL REGISTER of the nationally recognized accrediting agencies and associations that he has determined to be a reliable authority as to the quality of education or training offered.

(e) Notwithstanding any other provision of this section, for each fiscal year—

(1) The University of the District of Columbia is eligible to receive a grant under this part only if the amount of the grant it is scheduled to receive under § 608.31 exceeds the amount it is scheduled to receive in the same fiscal year under the District of Columbia Self-Government and Governmental Reorganization Act; and

(2) Howard University is eligible to receive a grant under this part only if the amount of the grant it is scheduled to receive under § 608.31 exceeds the amount it is scheduled to receive in the same fiscal year under the Act of March 2, 1867, 20 U.S.C. 123.

(Authority: 20 U.S.C. 1061 and 1063(f); House Report 99-861, 99th Cong., 2d Sess. p. 367, September 22, 1986; Senate Report 99-296, 99th Cong., 2d Sess. p. 23, May 12, 1986; Cong. Rec. of June 3, 1986, pp. 6588-6589)

[52 FR 30538, Aug. 14, 1987, as amended at 54 FR 14041, Apr. 6, 1989]

§ 608.3 What regulations apply?

The following regulations apply to this part:

(a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants); the following sections in 34 CFR Part 75 (Direct Grant Programs): §§ 75.1-75.104, 75.125-75.129, 75.190-75.192, 75.500, 75.524-75.534, 75.580-75.903; 34 CFR Part 77 (Definitions That Apply to Department Regulations); 34 CFR Part 78 (Education Appeal Board), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1060-1063a, 1063c)

[52 FR 30538, Aug. 14, 1987, as amended at 55 FR 21715, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21715, May 25, 1990, § 608.3(a) was amended by removing the word "and", and adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence, effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 608.4 What definitions apply?

The following definitions apply to this part:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award

Budget
EDGAR
Equipment
Fiscal year
Grant period
Private
Project
Project period
Public
Secretary

(b) The following definitions also apply to this part:

Accredited means the status of public recognition which a nationally recognized accrediting agency or association grants to an institution which meets certain established qualifications and educational standards.

Graduate means a student who has attended an institution for at least three semesters and fulfilled academic requirements for undergraduate studies in not more than five consecutive school years.

Junior or community college means an institution of higher education—

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which it awards a bachelor's degree or an equivalent degree; and

(3) That provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree; or offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

Pell Grant means the grant program authorized by Title IV-A-1 of the Higher Education Act of 1965, as amended.

Preaccredited means a status, also called candidacy status, that a nationally recognized accrediting agency or association, recognized by the Secretary to grant that status, has accorded an unaccredited institution that is making reasonable progress toward accreditation.

School year means the period of time from July 1 of one calendar year through June 30 of the subsequent calendar year. (A "school year" is equivalent to an "award year" under the Pell Grant Program.)

(Authority: 20 U.S.C. 1060-1063)

Subpart B—What Kind of Projects Does the Secretary Fund?

§ 608.10 What activities may be carried out under a grant?

(a) *Allowable activities.* Except as provided in paragraph (b) of this section, a grantee may carry out the following activities under this part—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional or research purposes;

(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities;

(3) Support of faculty exchanges, faculty development and faculty fellowships to assist faculty members in attaining advanced degrees in their fields of instruction;

(4) Academic instruction in disciplines in which Black Americans are underrepresented;

(5) Purchase of library books, periodicals, microfilm, and other educational materials;

(6) Tutoring, counseling, and student service programs designed to improve academic success;

(7) Funds and administrative management, and acquisition of equipment for use in strengthening funds management; and

(8) Joint use of facilities, such as laboratories and libraries.

(b) *Unallowable activities.* A grantee may not carry out the following activities under this part—

(1) Activities that are not included in the grantee's approved application;

(2) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;

(3) Activities that are inconsistent with a State plan for desegregation of

higher education that is applicable to the institution;

(4) Activities or services that relate to sectarian instruction or religious worship; and

(5) Activities provided by a school or department of divinity. For the purpose of this section, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(Authority: 20 U.S.C. 1062, 1063a and 1069c)

[52 FR 30538, Aug. 14, 1987, as amended at 54 FR 14041, Apr. 6, 1989]

§ 608.11 What is the duration of a grant?

The Secretary may award a grant under this part for a period of up to five academic years.

(Authority: 20 U.S.C. 1063b(b))

Subpart C—How Does an Eligible Institution Apply for a Grant?

§ 608.20 What are the application requirements for a grant under this part?

In order to receive a grant under this part, an institution must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain—

(a) A description of the activities to be carried out with grant funds;

(b) A description of how the grant funds will be used so that they will supplement and, to the extent practical, increase the funds that would otherwise be made available for the activities to be carried out under the grant and in no case supplant those funds;

(c) An assurance that the institution will provide the Secretary with an annual report on the activities carried out under the grant;

(d) An assurance that the institution will provide for, and submit to the Secretary, the compliance and financial audit described in § 608.41;

(e) An assurance that the proposed activities in the application are in accordance with any State plan that is applicable to the institution;

(f) The number of graduates of the applicant institution during the school year immediately preceding the fiscal year for which grant funds are requested; and

(g) The percentage of graduates of the applicant institution who are in attendance at a graduate or professional school in a degree program in a discipline in which Blacks are underrepresented.

(Approved by the Office of Management and Budget under control number 1840-0113)

(Authority: 20 U.S.C. 1063, 1063a and 1066(b)(2))

Subpart D—How Does the Secretary Make a Grant?

§ 608.30 What is the procedure for approving and disapproving grant applications?

The Secretary approves any application which satisfies the requirements of § 608.20 and does not disapprove any application, or any modification of an application, without affording the applicant reasonable notice and opportunity for a hearing.

(Authority: 20 U.S.C. 1063a)

§ 608.31 How does the Secretary determine the amount of a grant?

(a) Except as provided in paragraph (b) of this section, for each fiscal year, the Secretary determines the amount of a grant under this part by—

(1) Multiplying fifty percent of the amount appropriated for the HBCU Program by the following fraction—

$$\frac{\text{Number of Pell Grant recipients at the applicant institution during the school year immediately preceding that fiscal year:}}{\text{Number of Pell Grant recipients at all applicant institutions during the school year immediately preceding that fiscal year;}}$$

(2) Multiplying twenty-five percent of the amount appropriated for the HBCU Program by the following fraction—

$$\frac{\text{Number of graduates of the applicant institution during the school year immediately preceding that fiscal year;}}{\text{Number of graduates of the applicant institution during the school year immediately preceding that fiscal year.}}$$

(3) Multiplying twenty-five percent of the amount appropriated for the HBCU Program by the following fraction

$$\frac{\text{The percentage of graduates of the applicant institution who are in attendance at a graduate or professional school in a degree program in a discipline in which Blacks are underrepresented.}}{\text{The sum of the percentages of those graduates of all applicant institutions; and;}}$$

(4) Adding the amounts obtained in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(b) For the purpose of paragraph (a)(3) (of this section—

(1) The percentage of graduates of an applicant institution who are in attendance at a graduate or professional school in disciplines in which Blacks are underrepresented is measured by the following fraction:

$$\frac{\text{The number of graduates of an applicant institution who are in attendance at a graduate or professional school in disciplines in which Blacks are underrepresented}}{\text{The number of graduates in the graduating classes of the graduates included in the numerator;}}$$

(2) The Secretary considers that Blacks are underrepresented in a professional or academic discipline if the percentage of Blacks in that discipline is less than the percentage of Blacks in the general population of the United States; and

(3) The Secretary, after consultation with the Commissioner of the Bureau of Labor Statistics, through a notice in the FEDERAL REGISTER, notifies prospective applicants of the disciplines in which Blacks are underrepresented.

(c) Notwithstanding the formula in paragraph (a) of this section—

(1) For each fiscal year, each eligible institution with an approved application must receive at least $350,000; and

(2) If the amount appropriated for a fiscal year for the HBCU Program is insufficient to provide $350,000 to each eligible institution with an approved application, each grant is ratably reduced. If additional funds become available for the HBCU Program during a fiscal year, each grant is increased on the same basis as it was decreased until the grant amount reaches $350,000.

(d) The amount of any grant that the Secretary determines will not be required by a grantee for the period for which the grant was made is available for reallotment by the Secretary during that period to other eligible institutions under the formula set forth in paragraph (a) of this section.

(Authority: 20 U.S.C. 1063)

Subpart E—What Conditions Must a Grantee Meet?

§ 608.40 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraph (b) of this section, a grantee may expend grant funds for activities that are related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement, and to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant, and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not—

(1) Spend more than fifty percent of its grant award in each fiscal year for costs relating to constructing or maintaining a classroom, library, laboratory, or other instructional facility; or

(2) Use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1062)

§ 608.41 What are the audit and repayment requirements?

(a)(1) A grantee shall provide for the conduct of a compliance and financial audit of any funds it receives under this part of a qualified, independent organization or person in accordance with the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions,* 1981 revision, established by the Comptroller General of the United States.

(2) The grantee shall have an audit conducted at least once every two years, covering the period since the previous audit, and the grantee shall submit the audit to the Secretary.

(3) If a grantee is audited under Chapter 75 of Title 31 of the United States Code, the Secretary considers that audit to satisfy the requirements of paragraph (a)(1) of this section.

(b) An institution awarded a grant under this part must submit to the Education Department Inspector General three copies of the audit required in paragraph (a) of this section within 6 months after completion of the audit.

(c) Any individual or firm conducting an audit described in § 626.42(a) shall give the Department of Education's Inspector General access to records or other documents necessary to review the results of the audit.

(d) A grantee shall repay to the Treasury of the United States any grant funds it received that it did not expend or use to carry out the allowable activities included in its approved application within ten years following the date of the initial grant it received under this part.

(Authority: 20 U.S.C. 1063a and 1063c)

§ 608.42 Under what conditions does the Secretary terminate a grant?

If an institution loses its accreditation status, or its State authority, the Secretary terminates any existing grant that was made under this part.

(Authority: 20 U.S.C. 1063a)

PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM

Subpart A—General

Sec.
609.1 What is the Strengthening Historically Black Graduate Institutions Program?
609.2 What institutions are eligible to receive a grant under this Part?
609.3 What regulations apply?
609.4 What definitions apply?

Subpart B—What Kind of Project Does the Secretary Fund?

609.10 What activities may be carried out under a grant?
609.11 What is the duration of a grant?

Subpart C—How Does an Eligible Institution Apply for a Grant?

609.20 What are the application requirements for a grant under this part?

Subpart D—How Does the Secretary Make a Grant?

609.30 How does the Secretary determine the amount of a grant?

Subpart E—What Conditions Must a Grantee Meet?

609.40 What are the matching requirements?
609.41 What are allowable costs and what are the limitations on allowable costs?
609.42 What are the audit and repayment requirements?

AUTHORITY: 20 U.S.C. 1063b and 1063c, unless otherwise noted.

SOURCE: 52 FR 30541, Aug. 14, 1987, unless otherwise noted.

Subpart A—General

§ 609.1 What is the Strengthening Historically Black Graduate Institutions Program?

The Strengthening Historically Black Graduate Institutions Program provides grants to the institutions listed in § 609.2 to assist these institutions in establishing and strengthening their physical plants, development offices, endowment funds, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity in graduate education.

(Authority: 20 U.S.C. 1060 and 1063b)

§ 609.2 What institutions are eligible to receive a grant under this Part?

(a) An institution listed in paragraph (b) of this section is eligible to receive a grant under this part if the Secretary determines that the institution is making a substantial contribution to the legal, medical, dental, veterinary or other graduate education opportunities for Black Americans.

(b) The institutions referred to in paragraph (a) of this section are—

(1) Morehouse School of Medicine;

(2) Meharry Medical School;

(3) Charles R. Drew Postgraduate Medical School;

(4) Atlanta University; and

(5) Tuskegee Institute School of Veterinary Medicine.

(Authority: 20 U.S.C. 1063b(e))

§ 609.3 What regulations apply?

The following regulations apply to this part:

(a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants); the following sections in 34 CFR Part 75 (Direct Grant Programs) §§ 75.1–75.104, 75.125–75.129, 75.190–75.192, 75.500, 75.524–75.534, 75.580–75.903; 34 CFR Part 77 (Definitions That Apply to Department Regulations); 34 CFR Part 78 (Education Appeal Board), and 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1063b)

[52 FR 30541, Aug. 14, 1987, as amended at 55 FR 21715, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21715, May 25, 1990, § 609.3(a) was amended by removing the word "and", and adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence, effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 609.4 What definitions apply?

The following definitions apply to this part: *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
EDGAR
Equipment
Fiscal year
Grant period
Private
Project
Project period
Public
Secretary

Subpart B—What kind of Projects Does the Secretary Fund?

§ 609.10 What activities may be carried out under a grant?

(a) *Allowable activities.* Except as provided in paragraph (b) of this section, a grantee may carry out the following activities under this part—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional or research purposes;

(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities;

(3) Support of faculty exchanges and faculty fellowships to assist the faculty members in attaining advanced degrees in their fields of instruction;

(4) Academic instruction in disciplines in which Black Americans are underrepresented;

(5) Purchase of library books, periodicals, microfilm, and other educational materials;

(6) Tutoring, counseling, and student service programs designed to improve academic success.

(7) Establishing or improving a development office to strengthen and increase contributions from alumni and the private sector; and

(8) Establishing and maintaining an institutional endowment under 34 CFR Part 628 to facilitate financial independence.

(b) *Unallowable activities.* A grantee may not carry out the following activities under this part—

(1) Activities that are not included in the grantee's approved application;

(2) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;

(3) Activities that are inconsistent with a State plan for desegregation of higher education that is applicable to the institution;

(4) Activities or services that relate to sectarian instruction or religious worship; and

(5) Activities provided by a school or department of divinity. For the purpose of this provision, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(Authority: 20 U.S.C. 1062, 1063a and 1069c)

§ 609.11 What is the duration of a grant?

The Secretary may award a grant under this part for a period of up to five academic years.

(Authority: 20 U.S.C. 1063b)(b))

Subpart C—How Does an Eligible Institution Apply for a Grant?

§ 609.20 What are the application requirements for a grant under this part?

In order to receive a grant under this part, an institution must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain—

(a) A description of the activities to be carried out with grant funds and how those activities will improve graduate educational opportunities for Black and low-income students and lead to greater financial independence for the applicant;

(b) A description of how the applicant is making a substantial contribution to the legal, medical, dental, veterinary or other graduate education opportunities for Black Americans;

(c) An assurance from each applicant requesting in excess of $500,000 that 50 percent of the costs of all the activities to be carried out under the grant will come from non-Federal sources; and

(d) A description of how the grant funds will be used so that they will supplement, and to the extent practical, increase the funds that would otherwise be made available for the activities to be carried out under the grant and in no case supplant those funds, for the activities described in § 609.10(a)(1) through (a)(8).

(e) An assurance that the proposed activities in the application are in accordance with any State plan that is applicable to the institution.

(Approved by the Office of Management and Budget under control number 1840-0113)

(Authority: 20 U.S.C. 1063d and 1066(b)(2))

Subpart D—How Does the Secretary Make a Grant?

§ 609.30 How does the Secretary determine the amount of a grant?

(a) For each year for which funds are appropriated for this program, the Secretary awards a grant of $3,000,000 to the Morehouse School of Medicine if it submits an approved application, and with the remaining funds, a grant to each other eligible institution that submits an approved application.

(b) If the sum of the approved applications does not exceed the amount appropriated, the Secretary awards a grant in the amount requested and approved.

(c) If the sum of the approved requests exceeds the sum appropriated, and Morehouse School of Medicine submits an approved request for $3,000,000, and the amount appropriated exceeds $3,000,000, each grant to Meharry Medical School, Charles F. Drew Medical School, Atlanta University and Tuskegee Institute School of Veterinary Medicine is reduced as the Secretary considers appropriate, so that the sum of the approved grants equals the amount appropriated.

(d) If Morehouse School of Medicine submits an approved request for $3,000,000 and the amount appropriated does not exceed $3,000,000, Morehouse School of Medicine receives all the appropriated funds.

(Authority: 20 U.S.C. 1063b)

Subpart E—What Conditions Must a Grantee Meet?

§ 609.40 What are the matching requirements?

If an institution receives a grant in excess of $500,000, it must spend non-Federal funds to meet the cost of at least 50 percent of the activities approved in its application.

(Authority: 20 U.S.C. 1063b)

§ 609.41 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraph (b) of this section, a grantee may expand grant funds for activities that are reasonably related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement, and to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant, and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not—

(1) Spend more than fifty percent of its grant award in each fiscal year for costs relating to constructing or maintaining a classroom, library, laboratory, or other instructional facility.

(2) Use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1062 and 1063b)

§ 609.42 What are the audit and repayment requirements?

(a)(1) A grantee shall provide for the conduct of a compliance and financial audit of any funds it receives under this part by a qualified, independent organization or person in accordance with the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions,* 1981 revision, established by the Comptroller General of the United States.

(2) The grantee shall have an audit conducted at least once every two years, covering the period since the previous audit, and the grantee shall submit the audit to the Secretary.

(3) If a grantee is audited under Chapter 75 of Title 31 of the United States Code, the Secretary considers that audit to satisfy the requirements of paragraph (a)(1) of this section.

(b) An institution awarded a grant under this part must submit to the Education Department Inspector General three copies of the audit required in paragraph (a) of this section within 6 months after completion of the audit.

(c) Any individual or firm conducting an audit described in § 626.42(a) shall give the Department of Education's Inspector General access to records or other documents necessary to review the results of the audit.

(d) A grantee shall repay to the Treasury of the United States any grant funds it received that it did not expend or use to carry out the allowable activities included in its approved application within ten years following the date of the initial grant it received under this part.

(Authority: 20 U.S.C. 1063a and 1063c)

PART 612—DRUG PREVENTION PROGRAMS IN HIGHER EDUCATION

Subpart A—General

Sec.
612.1 What are the Drug Prevention Programs in Higher Education?
612.2 Who is eligible to receive an award?
612.3 [Reserved]
612.4 What regulations apply?
612.5 What definitions apply?

Sec.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

612.21 What types of competitions does the Secretary conduct?
612.22 How does the Secretary evaluate an application?
612.23 What selection criteria does the Secretary use?
612.24 What additional factors does the Secretary consider?
612.25 What other information may the Secretary request?

Subpart D—What Conditions Must Be Met by a Grantee?

612.31 What shall a grantee ensure with regard to project materials?
612.32 What must an Institution-wide Program project include?

AUTHORITY: 20 U.S.C. 3211, unless otherwise noted.

SOURCE: 53 FR 24884, June 30, 1988, unless otherwise noted.

Subpart A—General

§ 612.1 What are the Drug Prevention Programs in Higher Education?

The Drug Prevention Programs in Higher Education include the Institution-wide Program competitions, the Special Focus Program competitions, and the Analysis and Dissemination Program competitions. Awards under these competitions provide assistance to institutions of higher education (IHEs) and consortia of IHEs to develop, implement, operate, and improve programs of drug abuse education and prevention, including rehabilitation referral, for students enrolled in IHEs.

(Authority: 20 U.S.C. 3211)

§ 612.2 Who is eligible to receive an award?

(a) IHEs and consortia of IHEs are eligible to receive awards under these competitions.

(b) An applicant may receive no more than one award in any competition in any fiscal year.

(c) If an applicant has received an award in a competition, the applicant may not receive a new award in that competition in a subsequent year until—

(1) The Secretary determines that the applicant will satisfactorily complete the project previously supported; and

(2) The applicant has submitted every report that it must submit in connection with the prior project.

(d) In the case of Analysis and Dissemination Program competitions conducted under § 612.21(d), eligibility is limited to current or former recipients of an award under—

(1) An Institution-wide Program competition (see § 612.21(b)); or

(2) A Special Focus Program competition (see § 612.21(c)).

(Authority: 20 U.S.C. 3211)

§ 612.3 [Reserved]

§ 612.4 What regulations apply?

The following regulations apply to the Drug Prevention Programs in Higher Education:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 612.

(Authority: 20 U.S.C. 3211)

§ 612.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Fiscal Year
Grant
Private
Project
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Act means the Drug-Free Schools and Communities Act of 1986.

Consortium, as used in this part, means a group of private or public institutions of higher education.

Drug abuse education and prevention means prevention, early intervention, rehabilitation referral, and education related to the abuse of alcohol and the use and abuse of controlled, illegal, addictive, or harmful substances.

Illicit drug use means the use of illegal drugs and the abuse of other drugs and alcohol.

Institution of higher education means an educational institution in any State which—

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association listed by the Secretary pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: *Provided, however,* That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which requires the understanding and application of basic engineering, scientific, or mathematical principles or knowledge if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, the Secretary shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribed the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under the Elementary and Secondary Education Act of 1965 in effect prior to October 1, 1981, and shall also determine whether particular institutions meet such standards. For the purposes of this paragraph the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of education or training offered.

Limited enrollment, as used in this part, means a total fall enrollment of no more than 1,000 full-time and part-time students.

(Authority: 20 U.S.C. 3211)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 612.21 What types of competitions does the Secretary conduct?

(a) *General.* The Secretary conducts the competitions described in paragraphs (b), (c), and (d) of this section.

(b) *Institution-wide Program competitions.* (1) In these competitions, the Secretary supports projects to develop, implement, operate, and improve programs of drug abuse education and prevention, including rehabilitation referral, for students in IHEs.

(2) These projects are for comprehensive, institution-wide programs designed to prevent or eliminate students' use of illegal drugs and abuse of other drugs and alcohol, including activities whose direct or indirect purpose is to train students, faculty, and staff in drug abuse education and prevention.

(c) *Special Focus Program competitions*—(1) *General.* In these competitions, the Secretary supports projects addressing one or more specific approaches or problem areas related to drug abuse education and prevention for students enrolled in IHEs.

(2) *Approaches and problem areas.* The Secretary may conduct competitions based on the following individual approaches or problem areas:

(i) The formulation of promising new approaches to individuals and institutional leadership and responsibility.

(ii) The development and implementation of programs conducted in conjunction with national student networks or organizations.

(iii) The development, implementation, operation, or improvement of programs that concentrate on the following individual items or combination of these:

(A) Specific types of drug use or alcohol abuse.

(B) Specific approaches to the prevention of drug use or alcohol abuse.

(C) Particular student activities or elements of campus life.

(d) *Analysis and Dissemination Program competitions.* In these competitions, the Secretary supports projects to analyze and disseminate successful project designs, policies, and results of projects supported under Institution-wide Program competitions and Special Focus Program competitions.

(Authority: 20 U.S.C. 3211)

§ 612.22 How does the Secretary evaluate an application?

(a) For each competition, the Secretary evaluates an application on the basis of the applicable selection criteria in § 612.23.

(b) The Secretary awards up to 100 points for the selection criteria, including a reserved 15 points to be distributed in accordance with paragraph (c) of this section. The maximum possible points for each criterion in a competition, exclusive of the reserved points, is indicated in parentheses in § 612.23(c) following the title of that criterion appearing in the list of criteria applicable to the competition.

(c) The Secretary distributes the reserved 15 points among the applicable criteria in § 612.23. The Secretary announces the distribution through a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 3211)

§ 612.23 What selection criteria does the Secretary use?

(a) *Use of selection criteria.* The Secretary uses the selection criteria described in paragraph (b) of this section to evaluate applications in the competition conducted under this part. The selection criteria applicable to each competition are listed in paragraph (c) of this section.

(b) *General criteria*—(1) *Need.* The Secretary reviews each application to determine the extent to which the project meets specific needs in drug education and prevention for students enrolled in institutions of higher education that will participate, including—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs; and

(iii) The benefits to be gained by meeting those needs.

(2) *Design.* The Secretary reviews each application to determine the quality of the design of the project, including—

(i) The extent to which project activities are appropriate to and designed to meet the objectives of—

(A) The competition; and

(B) The proposed project;

(ii) The extent to which the project's design takes into account research findings, scholarly information, and information on exemplary practices; and

(iii) The extent and magnitude of the benefits that the design is likely to produce for students in the applicant's institution or student enrolled in institutions of higher education.

(3) *Methods and management plan.* The Secretary reviews each application to determine the quality of the methods and management plan proposed for implementing the design of the project, including—

(i) The extent to which the methods for implementing the design of the project and for achieving the objectives of the project are appropriate;

(ii) The extent to which the management plan is likely to be effective and will ensure proper and efficient administration of the project; and

(iii) The quality of the applicant's management plan to use its resources and personnel to achieve each objective.

(4) *Key personnel.* (i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use in the project, including—

(A) The qualifications of the project director (if one is used) and of the other key personnel to be used in the project;

(B) The extent to which key personnel can provide specialized knowledge necessary for the success of the project or have access to that knowledge; and

(C) The time that each key person will commit to the project.

(ii) In evaluating personnel qualifications under paragraph (b)(4)(i)(A) of this section, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other qualifications that relate to the quality of the project.

(5) *Evaluation.* The Secretary reviews each application to determine the quality of the plan for evaluating the project, including the extent to which the applicant's methods of evaluation—

(i) Are adequate and appropriate to the project; and

(ii) Are objective and will produce quantitative and qualitative data that are valid and reliable.

(6) *Cost effectiveness and budget clarity.* The Secretary reviews each application to determine the extent to which—

(i) Costs are reasonable in relation to the objectives of the project;

(ii) The budget is adequate to support the project; and

(iii) Allocations of resources in the budget are clearly related to the objectives of the project.

(7) *Organizational commitment.* The Secretary considers the extent of the applicant's organizational commitment to the project, its capacity to continue the project, and the likelihood that it will continue the project when Federal assistance ends.

(c) *Specific competition criteria*—(1) *Institution-wide Program competitions.*

(i) *Need.* (5 points) (see § 612.23(b)(1)).

(ii) *Design.* (20 points) (see § 612.23(b)(2)).

(iii) *Methods and management plan.* (15 points) (see § 612.23(b)(3)).

(iv) *Key personnel.* (10 points) (see § 612.23(b)(4)).

(v) *Evaluation.* (10 points) (see § 612.23(b)(5)).

(vi) *Cost effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(vii) *Organizational commitment.* (15 points) (see § 612.23(b)(7)).

(2) *Special Focus Program competitions.*

(i) *The formulation of promising new approaches to individual and institutional leadership and responsibility.*

(A) *Need.* (10 points) (see § 612.23(b)(1)).

(B) *Design.* (30 points) (see § 612.23(b)(2)).

(C) *Methods and management plan.* (15 points) (see § 612.23(b)(3)).

(D) *Key personnel.* (20 points) (see § 612.23(b)(4)).

(E) *Evaluation.* (0 points) (see § 612.23(b)(5)).

(F) *Cost effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(ii) *The development and implementation of programs conducted in conjunction with national student networks or organizations.*

(A) *Design.* (20 points) (see § 612.23(b)(2)).

(B) *Methods and management plan.* (20 points) (see § 612.23(b)(3)).

(C) *Key personnel.* (15 points) (see § 612.23(b)(4)).

(D) *Evaluation.* (10 points) (see § 612.23(b)(5)).

(E) *Cost effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(F) *Organizational commitment.* (10 points) (see § 612.23(b)(7)).

(iii) *The development, implementation, operation, or improvement of programs that concentrate on specific types of drug use or alcohol abuse; specific approaches to the prevention of drug use or alcohol abuse; particular student activities or elements of campus life; or a combination of these.*

(A) *Need.* (15 points) (see § 612.23(b)(1)).

(B) *Design.* (20 points) (see § 612.23(b)(2)).

(C) *Methods and management plan.* (15 points) (see § 612.23(b)(3)).

(D) *Key personnel.* (15 points) (see § 612.23(b)(4)).

(E) *Evaluation.* (10 points) (see § 612.23(b)(5)).

(F) *Cost effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(3) *Analysis and Dissemination Program competitions.*

(i) *Design.* (30 points) (see § 612.23(b)(2)).

(ii) *Methods and management plan.* (20 points) (see § 612.23(b)(3)).

(iii) *Key personnel.* (15 points) (see § 612.23(b)(4)).

(iv) *Evaluation.* (10 points) (see § 612.23(b)(5)).

(v) *Cost effectiveness and budget clarity.* (10 points) (see § 612.23(b)(6)).

(Approved by the Office of Management and Budget under control number 1840-0587)

(Authority: 20 U.S.C. 3211)

§ 612.24 What additional factors does the Secretary consider?

After applications are scored and placed in rank order, the Secretary, in selecting applications for funding, seeks to achieve an equitable distribution of funded projects by considering the following factors:

(a) Geographic regions.

(b) Two-year and four-year IHEs.

(c) Public and private IHEs.

(d) IHEs with limited enrollments.

(Authority: 20 U.S.C. 3211)

§ 612.25 What other information may the Secretary request?

In any competition, after applications are scored and placed in rank order, the Secretary may request of an applicant oral information related to its application. The information requested will be relevant to the applicable criteria and will be used to verify or clarify information about a project or about the applicant in the Secretary's evaluation of an application.

(Authority: 20 U.S.C. 3211)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 612.31 What shall a grantee ensure with regard to project materials?

A grantee shall ensure that any materials the grantee produces or distributes with funds provided under this part reflect the message that illicit drug use is wrong and harmful.

(Authority: 20 U.S.C. 3221)

§ 612.32 What must an Institution-wide Program project include?

A recipient of an award under the Institution-wide Program competition shall—

(a) Conduct an initial and a final assessment of the extent to which the recipient's students use illegal drugs and abuse alcohol and other drugs; and

(b) (1) Develop an institution-wide drug and alcohol policy with respect to its students; or

(2) Review and, if necessary, revise an existing policy regarding drugs and alcohol.

(Authority: 20 U.S.C. 3211)

PART 614—COLLEGE FACILITIES LOAN PROGRAM

Subpart A—General

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614.50 How does the Secretary provide for a discounted prepayment of a loan?

AUTHORITY: 20 U.S.C. 1132g–1132g-3, unless otherwise noted.

SOURCE: 52 FR 30561, Aug. 14, 1987, unless otherwise noted.

Subpart A—General

§ 614.1 What is the College Facilities Loan Program?

The College Facilities Loan Program provides low interest loans to assist undergraduate postsecondary educational institutions in the construction, reconstruction, or renovation of housing, undergraduate academic facilities, and other educational facilities for students and faculties.

(Authority: 20 U.S.C. 1132g)

§ 614.2 Who is eligible to receive a loan?

Any of the following are eligible to receive a loan:

(a) Any public or private non-profit undergraduate postsecondary educational institution which offers, or provides satisfactory assurance to the Secretary that it will offer within a reasonable time after completion of the facility for which assistance is requested under this part, at least a two-year program acceptable for full credit toward a baccalaureate degree.

(b) Any public educational institution that—

(1) Is administered by a college or university which is accredited by a nationally recognized accrediting agency or association;

(2) Offers technical or vocational instruction; and

(3) Provides residential facilities for some or all of the students receiving that instruction.

(c) Any public or non-profit private hospital that—

(1) Operates a school of nursing beyond the level of high school and is approved by an appropriate State authority; or

(2) Is approved for internships by an accrediting agency or association recognized by the Secretary.

(d) Any non-profit corporation established for the sole purpose of providing housing or other educational facilities for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section if—

(1) The housing or facilities are not restricted to students or faculty on the basis of their membership in or affili-

ation with any social, fraternal, or honorary society or organization; and

(2) Upon dissolution of the non-profit corporation, all title to any property built or purchased with proceeds of the loan will go to the institutions or be used for some other non-profit educational purpose.

(e) Any agency, public authority, or other instrumentality of any State, established for the purpose of providing or financing housing or other educational facilities for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section.

(f) Any non-profit student housing cooperative corporation established for the purpose of providing housing for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section.

(Authority: 20 U.S.C. 1132g-3)

§ 614.3 What types of projects may the Secretary fund?

(a) The Secretary approves loans for projects that enable undergraduate postsecondary educational institutions to construct, reconstruct, or renovate—

(1) Housing facilities for students and faculties;

(2) Undergraduate academic facilities; or

(3) Other educational facilities.

(b) The Secretary may announce from among those categories listed in paragraph (a) of this section funding priorities under this program in any given fiscal year through a Notice published in the FEDERAL REGISTER in accordance with the procedures in 34 CFR 75.105.

(c) In addition to the priorities that may be established under paragraph (b) of this section, the Secretary gives priority to loans for renovation or reconstruction of—

(1) Older undergraduate academic facilities; and

(2) Undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period.

(Authority: 20 U.S.C. 1132g-2)

§ 614.4 What regulations apply?

The following regulations apply to the College Facilities Loan Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Subparts D and P, Part 75 (Direct Grant Programs) §§ 75.105, 75.600–75.616, Part 77, and Part 79.

(b) The regulations in this Part 614.

(Authority: 20 U.S.C. 1132g-1)

§ 614.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in EDGAR 34 Part 77.1:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal year
Nonprofit
Private
Public
Recipient
Secretary
State
Supplies

(b) *Revised EDGAR definitions.* The following terms defined in EDGAR, 34 CFR 77.1, are redefined for this part as follows:

Acquisition means taking ownership of property through purchase at fair market value.

Equipment means non-expendable personal property having a useful life of more than ten years, including machinery, fixtures, and other items necessary for maintenance and operation of a facility, except books, computer software, instructional materials, and other items involving current operating expenses such as fuel, supplies, and serviceable parts. Equipment may consist of—

(1) *Built-in equipment,* which is a permanent part of a facility; and

(2) *Initial equipment,* which includes furniture and other necessary and appropriate items for the functioning of a facility taking into account the specific purposes of the facility.

Project means the construction activity that is proposed for funding by an applicant under this program.

(c) *Other definitions.* The following definitions also apply to this part:

Act means the Higher Education Act of 1965, as amended. Unless otherwise indicated, references to titles in this part are to titles of the Act.

Assignable area means the square footage of floor space in facilities which is designated and available for assignment to specific functional purposes, but does not include—

(1) Areas used for general circulation within a building;

(2) Areas for public washrooms;

(3) Areas for building maintenance or custodial services; or

(4) Areas in central maintenance and utility facilities that exist only to support the operation and use of other structures available for assignment to specific functional purposes.

Construction means—

(1) The erection of new or the expansion of existing structures, including acquisition of the land thereunder, and the acquisition and installation of initial equipment therefor; or

(2) The acquisition of existing structures, including the land thereunder, not owned by the institution involved.

Design capacity, with respect to housing, means the number of occupants a building was originally designed to house, or if fewer, the maximum number of occupants permitted by State or local building codes.

Development cost means costs of the construction, reconstruction, or renovation of the housing, undergraduate academic facilities, or other educational facilities, including necessary site improvements to permit its use for housing, undergraduate academic facilities, or other educational facilities.

(20 U.S.C. 1132g-3(d))

Faculties means members of the faculty and their families.

Full-time enrollment means the number of full-time undergraduate resident and non-resident students, as reported by the educational institution—for the fall semester of the academic year prior to that in which the application is filed—to the Center for Education Statistics of the Department of Education for its annual Integrated Postsecondary Education Data Systems (IPEDS) survey.

Gross area means the total square footage of floor space within the outside faces of exterior walls in the facilities including common areas such as halls and stairways, public washrooms, and areas for building maintenance and utilities.

Housing means—

(1) New or existing structures suitable for dwelling use by students or students and faculty and their families, including—(i) Dormitories; and (ii) Apartments; and

(2) Dwelling facilities for students or faculty provided by rehabilitation, alteration, conversion, or improvement of existing structures that are otherwise inadequate for the proposed dwelling use.

(20 U.S.C. 1132g-3(a))

Housing shortage means an existing need for decent, safe, and sanitary housing for currently enrolled full-time undergraduate students and faculty. "Other educational facilities" means—

(1) New or existing structures suitable for use as cafeterias or dining halls, student centers or student unions, infirmaries or other inpatient or outpatient health facilities, or for use as other essential service facilities; and

(2) Structures suitable for those uses provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for those uses.

(20 U.S.C. 1132g-3(f))

Part-time enrollment means the number of part-time undergraduate resident and non-resident students, as reported by the educational institution—for the fall semester of the academic year prior to that in which the application is filed—to the Center for Education Statistics of the Department of Education for its annual Integrated Postsecondary Education Data Systems (IPEDS) survey.

Reconstruction or renovation means rehabilitation, alteration, conversion or improvement (including the acquisition and installation of initial equipment, or modernization or replacement of that equipment) of existing structures. ("Major renovation" means reconstruction or renovation with a total development cost in excess of $100,000.)

(20 U.S.C. 1132i-1(1)(B))

Substandard housing means student housing, either on campus or off campus that—

(1) Is owned or leased by an institution eligible under § 614.2; and

(2) Fails to meet current applicable State or local building code requirements.

Undergraduate academic facilities means structures suitable for use as classrooms, laboratories, libraries, and related facilities, the primary purpose of which is the instruction of students pursuing at least a two-year program acceptable for full credit toward a baccalaureate degree, or for administration of the educational programs serving those students, and maintenance, storage, or utility facilities essential to operation of these facilities, as well as infirmaries or other facilities designed to provide primarily outpatient care for students and instructional personnel. The term does not include facilities such as—

(1) Dormitories, residence halls, or similar facilities designed for residence or habitation;

(2) Facilities primarily intended for events for which admission is to be charged the general public;

(3) Gymnasiums, stadiums, swimming pools, student centers, or other similar facilities specially designed for athletic or recreational activities; or

(4) Facilities used for religious worship or sectarian activities, or used in connection with a program conducted by a school or department of divinity.

(Authority: 20 U.S.C. 1132g-1(c), 1152g-3(c))

Subpart B—How Does One Apply for a Loan?

§ 614.10 How does one submit an application?

(a) An applicant for a reservation of funds for a loan shall submit an application to the Secretary at the time, in the manner, and containing the information required by the Secretary.

(b)(1) An applicant may submit only one application for a reservation of funds in any fiscal year for each category of project described in § 614.3.

(2) For purposes of paragraph (b)(1) of this section, the Secretary considers as a separate applicant a branch campus of a multi-campus institution if that branch campus has its own Federal Interagency Committee on Education (FICE) identification number.

(Authority: 20 U.S.C. 1132g-1(c))

§ 614.11 What conditions of eligibility apply?

(a) The Secretary considers a project eligible to receive assistance only if—

(1) The applicant has not contracted for construction before filing its application; and

(2) The facility will not be used—

(i) For religious worship;

(ii) In connection with a school or department of divinity; or

(iii) For a school providing either training for religious purposes or principally sectarian instruction.

(b) The Secretary does not approve another college facilities loan authorized under Part F, Title VII, of the Higher Eduction Act for any facility on the campus of an undergraduate educational institution until ten years after the date on which a previous loan for a facility on that campus was made under Part F, Title VII, of the Higher Education Act.

(c) Except in cases where construction assistance is necessary to remove a threat to life or limb or to repair a facility affected by a natural disaster, the Secretary does not approve a loan for a project in a facility on which there is an outstanding loan made under this part or under Title IV of the Housing Act of 1950.

(d) The Secretary does not approve a loan to an institution that is—

(1) Delinquent on a loan previously made under the Act, or under Title IV of the Housing Act of 1950, whether or not the Secretary has agreed to any deferment; or

(2) In default of any other obligation made under any other Federal program.

(e) The Secretary does not approve a loan to an institution that is financially insolvent.

(Authority: 20 U.S.C. 1132g-(b), 1132g-1(c))

§ 614.12 What evidence, assurances, and opinions of counsel are required of the applicant institution?

An applicant shall submit to the Secretary, as part of its application, the following evidence, assurances, and opinions of counsel:

(a) Satisfactory evidence that the applicant has or will have—based on title or lease—an interest in the project site, including the right of access, that is sufficient to ensure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(b) Satisfactory evidence that the applicant has the necessary legal authority to—

(1) Finance, construct, reconstruct or renovate or maintain the proposed facilities;

(2) Apply for and receive the proposed loan; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan.

(c) Satisfactory assurance that if the Secretary offers and the applicant accepts the loan, the applicant will comply with the terms and conditions for repayment of the loan.

(d) Satisfactory assurance that the applicant will secure the loan in a manner the Secretary finds will reasonably assure repayment. The security may be one or a combination of procedures listed in § 614.27.

(e) Satisfactory assurance that the applicant will not, without consent of the Secretary, sell, mortgage, encumber, or lease to others during the life of the loan, the facility constructed, reconstructed, or renovated with the aid of the loan.

(f) Legal opinions by bond counsel or legal counsel with respect to—

(1) The legal sufficiency of the note or the bond issue that the applicant proposes to offer to secure the loan;

(2) The legal authority of the applicant to offer the note or bond issue and secure it by the proposed collateral; and

(3) The legal sufficiency of the debt instrument and collateral on delivery.

(g) As used in this paragraph, "bond counsel" means a law firm or individual lawyer—

(1) Who is thoroughly experienced in the financing of construction, reconstruction, or renovation projects through the issuance of bonds;

(2) Whose approving opinions have been previously accepted by purchasers of bonds offered at public sales; and

(3) Who, if the borrower is a public institution or agency, is a recognized bond counsel in the municipal field.

(h) As used in this paragraph, "legal counsel" means a law firm or individual lawyer—

(1) Having experience in the financing of construction, reconstruction, or renovation projects; and

(2) Whose opinions with regard to that type of financing have been accepted previously by responsible lenders or lending institutions.

(Approved by the Office of Management and Budget under control number 1840-0580)

(Authority: 20 U.S.C. 1132g-1(c))

§ 614.13 What application procedures apply to non-profit student housing cooperatives?

A nonprofit student housing cooperative, as described in § 614.2(f), that applies for a reservation of funds for a loan must assure the Secretary at the time of its application that—

(a) The institution the proposed project is intended to serve has agreed to cosign the loan as a borrower; or

(b) If State law in effect on September 7, 1964 prevents the institution from cosigning the loan, the institution has approved the cooperative and the proposed project.

(Authority: 20 U.S.C. 1132g-3(b))

§ 614.14 What application procedures apply to non-profit corporations?

If a non-profit corporation described in § 614.2(d) that has not been established by the institution or institutions the proposed project is intended to serve applies for a reservation of funds for a loan, it shall assure the Secretary at the time of its application that—

(a) The educational institution or institutions the proposed project is intended to serve have agreed to cosign the loan as a borrower; or

(b) If State law in effect on September 7, 1964 prevents the institution or institutions from cosigning the loan, the institution or institutions have approved the corporation and the proposed project.

(Authority: 20 U.S.C. 1132g-3(b))

Subpart C—How Does the Secretary Make a Loan?

§ 614.20 How does the Secretary evaluate applications?

The Secretary evaluates applications for loans to construct, reconstruct or renovate—

(a) Housing facilities according to the criteria in § 614.21;

(b) Undergraduate academic facilities according to the criteria in § 614.22; and

(c) Other educational facilities according to the criteria in § 614.23.

(Approved by the Office of Management and Budget under control number 1840-0580)

(Authority: 20 U.S.C. 1132g-1(c))

§ 614.21 What selection criteria are used to evaluate applications for loans for housing facilities?

The Secretary evaluates each application for a loan for housing facilities on the basis of the following criteria:

(a) *Use of existing housing.* (10 points)

(1) The Secretary considers the extent to which the institution makes effective use of the undergraduate student housing space that it owns or leases as measured by the number of assignable square feet per undergraduate student occupant.

(2) The Secretary assigns the highest scores to institutions with the smallest amount of assignable square feet per undergraduate student occupant.

(b) *Housing deficiency.* (20 points)

(1) The Secretary considers the extent to which the institution has a housing deficiency as measured by the number of accommodations required to—

(i) Eliminate overcrowding of undergraduate students, that is, occupancy in excess of design capacity;

(ii) Provide accommodations for undergraduate students living in substandard housing; and

(iii) Provide accommodations for undergraduate students denied housing but registered for classes for the opening fall semester preceding the date of application.

(2) The Secretary assigns the highest scores to institutions with the greatest housing deficiency.

(c) *Relative housing deficiency.* (20 points)

(1) The Secretary considers the extent to which the institution has a relative housing deficiency as measured in terms of a percentage obtained by dividing the total housing deficiency in § 614.21(b) by the institution's full-time enrollment.

(2) The Secretary assigns the highest scores to institutions with the highest relative housing deficiency.

(d) *Cost effectiveness of project.* (30 points)

(1) The Secretary considers the cost effectiveness of the project as measured by the total development cost per gross square foot of the project, and the total development cost per undergraduate student accommodation.

(2) The Secretary assigns up to 15 points to institutions with the lowest cost per gross square foot, and up to 15 points to institutions with the lowest cost per undergraduate student accommodation.

(e) *Financial need.* (20 points)

(1) The Secretary considers the basic education and general annual expenditures per undergraduate student, as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which data are available.

(2) The Secretary assigns the highest scores to institutions with the lowest expenditure per student.

(Approved by the Office of Management and Budget under control number 1840-0580)

(Authority: 20 U.S.C. 1132g-1(c))

§ 614.22 What selection criteria are used to evaluate applications for loans for undergraduate academic facilities?

(a) The Secretary evaluates each application for a loan for the construction of new undergraduate academic facilities according to the following criteria:

(1) *Increase in enrollment.* (25 points)

(i) The Secretary considers the numerical increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(ii) The Secretary assigns the highest scores to institutions with the largest increases in enrollment.

(2) *Relative increase in enrollment.* (25 points)

(i) The Secretary considers the percentage increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the percentage increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(ii) The Secretary assigns the highest scores to institutions with the largest relative increases in enrollment.

(3) *Use of existing undergraduate academic facilities.* (30 points)

(i) The Secretary assesses the extent to which the institution makes use of its existing undergraduate academic facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(ii) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per undergraduate student.

(4) *Financial need.* (20 points)

(i) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(ii) The Secretary assigns the highest scores to institutions with the lowest expenditure per undergraduate student.

(Authority: 20 U.S.C. 1132g-1(c))

(b) The Secretary evaluates each application for a loan for the reconstruction or renovation of undergraduate academic facilities according to the following criteria:

(1) *Age of undergraduate academic facilities to be renovated or reconstructed.* (25 points)

(i) The Secretary considers the date of construction completion of the undergraduate academic facilities to be renovated or reconstructed.

(ii) The Secretary assigns the highest scores to the oldest facilities.

(2) *Deferred maintenance.* (25 points)

(i) The Secretary considers the extent to which the facilities have gone without major renovation or reconstruction.

(ii) The Secretary assigns the highest scores to the facilities that have gone the longest time without major renovation or reconstruction.

(3) *Use of existing undergraduate academic facilities.* (30 points)

(i) The Secretary assesses the extent to which the institution makes use of its existing undergraduate academic facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the total assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(ii) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per student.

(4) *Financial need.* (20 points)

(i) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. The expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(ii) The Secretary assign the highest scores to institutions with the lowest expenditure per undergraduate student.

(Approved by the Office of Management and Budget under control number 1840-0580)

(Authority: 20 U.S.C. 1132g-1(c))

§ 614.23 What selection criteria are used to evaluate applications for loans for other educational facilities?

The Secretary evaluates each application for a loan for other educational facilities according to the following criteria:

(a) *Increase in enrollment.* (25 points)

(1) The Secretary considers the numerical increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(2) The Secretary assigns the highest scores to institutions with the largest increases in enrollment.

(b) *Relative increase in enrollment.* (25 points)

(1) The Secretary considers the percentage increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the percentage increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(2) The Secretary assigns the highest scores to institutions with the largest relative increases in enrollment.

(c) *Use of existing other educational facilities.* (30 points)

(1) The Secretary assesses the extent to which the institution makes use of its existing other educational facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the total assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(2) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per undergraduate student.

(d) *Financial need.* (20 points)

(1) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(2) The Secretary assigns the highest scores to institutions with the lowest expenditure per undergraduate student.

(Approved by the Office of Management and Budget under control number 1840-0580)

(Authority: 20 U.S.C. 1132g-1(c))

§ 614.24 What apportionment requirements and other limitations apply?

(a) The Secretary awards not more than 12.5 percent of the amount of the funds provided under this part to educational institutions within any one State.

(b) Subject to paragraph (a) of this section, the Secretary may, as necessary, deviate from the rank order of applications in each category of loans to ensure that not less than ten percent of the number of loans made or not less than ten percent of the amount of total funds available are reserved for applications from historically black colleges and universities.

(c) The maximum loan that the Secretary makes to an eligible applicant is $3,000,000.

(d) The minimum loan that the Secretary makes to an eligible applicant is $250,000.

(Authority: 20 U.S.C. 1132g-1(c), 1132g-2)

§ 614.25 What determination must be made by the Secretary regarding nonavailability of equally favorable terms and conditions?

(a) The Secretary makes a loan only if the Secretary finds that the applicant is unable to secure from other sources a loan with terms and conditions equally as favorable as the terms and conditions applicable to loans under this part.

(b) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may require, including—if bonds are to be issued—public advertising for bids.

(Authority: 20 U.S.C. 1132g)

§ 614.26 What is required in a loan agreement?

(a) The Secretary prepares and sends a loan offer to an applicant if—

(1) The application meets all requirements of the Act and the regulations in this part; and

(2) The Secretary approves the project and reserves funds for it.

(b) The loan offer—

(1) Contains the terms and conditions for the loan including financial reporting requirements; and

(2) Is conditioned on the acceptance of these terms and conditions.

(c) The accepted loan offer constitutes the agreement between the Secretary and the applicant for the loan.

(Authority: 20 U.S.C. 1132-1(c))

§ 614.27 What kinds of security are required for the loan?

(a) A borrower shall evidence its loan by either notes or bonds issued by the borrower, secured by a mortgage, a trust indenture, project revenues, other revenue sources, or any combination thereof.

(b) If the Secretary determines that additional security is needed to assure loan repayment, the Secretary may require one or more of the following:

(1) A pledge of income from endowment funds.

(2) A pledge of securities.

(3) A mortgage on other facilities or real property.

(4) A guarantee of the payment of principal and interest by a third party.

(Approved by the Office of Management and Budget under control number 1840-0580)

(Authority: 20 U.S.C. 1132g-1(c))

§ 614.28 What evidence of an approved debt instrument is required?

After signifying to the Secretary its acceptance of a loan offer, a borrower shall furnish to the Secretary evidence of indebtedness in the form the Secretary prescribes in the loan agreement and in accordance with the terms and conditions of the loan agreement.

(Approved by the Office of Management and Budget under control number 1840-0580)

(Authority: 20 U.S.C. 1132g-1(c))

§ 614.29 When does loan closing take place?

Loan closing occurs at a time determined by the Secretary.

(Authority: 20 U.S.C. 1132-1g(c))

§ 614.30 What are the conditions for interim financing?

(a) A borrower may arrange for interim financing, subject to approval of the Secretary, to cover the cost of construction pending the loan closing.

(b) After the award of all prime construction contracts, if the Secretary finds that the borrower is unable to secure necessary interim financing on reasonable terms, the Secretary may provide for advances against the approved loan.

(Authority: 20 U.S.C. 1132g-1(c))

Subpart D—What Conditions Must Be Met After an Award?

§ 614.40 What are the general rules for determining eligible development costs?

The Secretary determines eligible development costs by assessing the reasonableness and appropriateness of costs that would be incurred by the project taking into account—

(a) The timing of when certain costs would be incurred by the applicant; and

(b) The applicant's compliance with the regulations in this part.

(Authority: 20 U.S.C. 1132g-1(c))

§ 614.41 What are ineligible development costs?

(a) The Secretary excludes from eligible development costs any costs for construction, reconstruction, or renovation or for otherwise eligible equipment, if the construction, reconstruction, or renovation contract was entered into before the Secretary executed the loan agreement and before the Secretary concurred in the award of the contract, except in cases where there is a threat to life or limb or there is a natural disaster which is related to the construction project.

(b) In cases of threat to life or limb or a natural disaster, the Secretary, in determining the eligibility of costs incurred prior to execution of a loan agreement and the approval of a construction contract, requires that the applicant provide a certification from a licensed professional architect or engineer that construction is necessary and appropriate.

(c) The Secretary excludes from eligible development costs any costs for—

(1) Land incurred before the applicant files the application;

(2) The acquisition of a structure incurred before the applicant files the application;

(3) Equipment incurred before the date the applicant files the application; and

(4) Ineligible facilities included in the total development costs.

(Authority: 20 U.S.C. 1132g-3(d))

§ 614.42 What are the requirements with respect to a construction account?

(a) A borrower shall deposit in a separate account known as the Construction Account—

(1) The proceeds of the sale of the bonds or notes;

(2) Any interim advances against the approved loan; and

(3) All other money that the borrower will use in paying for the construction of the approved project.

(b) The borrower shall make all expenditures for construction, rehabilitation or acquisition from this account.

(c) Accounting for this account must be in accordance with generally accepted accounting principles.

(d) If the borrower chooses to invest the funds in this account, the borrower—unless otherwise prohibited by State or local law—shall invest those funds in—

(1) Direct obligations of the U.S. Government; or

(2) Obligations whose principal and interest are guaranteed by the U.S. Government.

(e) An investment made in accordance with paragraph (d) of this section must be in obligations that will mature not later than 18 months from the date of the investment.

(f) Any interest earned on the investment of idle funds in the Construction Account during the construction period must be deposited in the Construction Account. The interest must be credited against the interest expense accruing during the construction period. In the event that interest earned exceeds interest expense, the excess must be used to reduce the outstanding principal amount of the loan.

(Authority: 20 U.S.C. 1132g-1(c))

§ 614.43 What are the procedures for loan disbursement?

(a) The borrower shall submit requests for loan disbursement on forms prescribed by the Secretary and shall furnish to the Secretary any additional information the Secretary may request.

(b) The Secretary charges interest on the advances at the same rate the Secretary charges interest on the loan.

(Authority: 20 U.S.C. 1132g-1(c))

§ 614.44 How shall the balance remaining in the construction fund be disposed of?

Upon full settlement with all contractors, suppliers, and the other parties to whom it has incurred obligations under the project, a borrower shall dispose of any money remaining in the Construction Account in accordance with the provisions of the loan agreement.

(Authority: 20 U.S.C. 1132g-1(c))

§ 614.45 How is the determination of final approved development costs made?

(a) For the purpose of determining the final approved development costs, the Secretary may permit a borrower to use—in place of an audit by the Government—a certificate of project development costs prepared on forms prescribed by the Secretary and executed by the borrower.

(b)(1) In conjunction with the Secretary's determination of final approved development costs, the borrower shall submit to the Secretary whatever documentation the Secretary requires.

(2) This documentation may include, but is not limited to, a certificate of actual cost—in a form prescribed by the Secretary—showing the actual cost to the borrower for construction, architectural, legal, and other items of expense approved by the Secretary.

(Approved by the Office of Management and Budget under control number 1840-0580)

(Authority: 20 U.S.C. 1132g-1)

§ 614.46 How must pledged revenues be applied?

(a) A borrower that has pledged project revenues—either net or gross—as security for its loan must deposit all pledged revenues in a separate fund in accordance with the terms of the loan agreement.

(b) This fund is known as the Revenue Fund.

(c) The borrower shall make repayments on the loan from this fund in accordance with the terms of the loan agreement.

(Authority: 20 U.S.C. 1132g-1(c))

§ 614.47 What are the length and maturity of loans?

(a)(1) The maximum repayment period for a loan under this program is 30 years, unless the Secretary finds that a longer repayment period is necessary.

(2) In no case may a loan repayment period exceed the lesser of 50 years or the estimated useful life of the facilities to be constructed, reconstructed, renovated, or purchased with the proceeds.

(b) Loans must bear interest at a rate not to exceed 5.5 percent per annum.

(c) Unless the Secretary authorizes otherwise—

(1) The borrower must repay the loan semi-annually in substantially level total annual installments of principal and interest.

(2) The Secretary may approve a loan that does not mature serially if that type of loan is necessary to be compatible with a borrower's total financial planning.

(3) For a reasonable period of time—normally not exceeding two years following the closing of the loan—the Secretary may permit a borrower to make payments of interest only.

(Authority: 20 U.S.C. 1132g-1(c))

§ 614.48 What are borrowers' non-financial obligations?

In addition to its financial obligations under the loan agreement, a borrower under this program must—as required in the loan agreement—agree to—

(a) Maintain its status as an eligible educational institution, including its accreditation;

(b) Use the project for the purpose or purposes for which the loan was made, unless the Secretary approves a change of purpose;

(c) Maintain insurance on the project facilities;

(d) Repair and maintain the project facilities; and

(e) Never use the project facilities for religious worship or a sectarian activity or for a school or department of divinity.

(Authority: 20 U.S.C. 1132g-1(c))

Subpart E—What Conditions Must be met for a Discounted Prepayment of a Loan?

§ 614.50 How does the Secretary provide for a discounted prepayment of a loan?

(a)(1) The Secretary may provide a discount for prepayment in full of a college housing loan in an amount determined to be in the best financial interests of the Government for institutions that meet the conditions established in paragraph (b) of this section.

(2) The discount is applicable both to loans in current payment status and to loans in default as long as an institution does not become delinquent or in default on its loans after October 1, 1986. The Secretary reviews proposals from institutions with defaulted loans separately from those in current payment status in order to provide institutions in default all possible guidance in accomplishing the prepayment of their college housing loans.

(b) The Secretary may approve a proposal from an institution for discounted prepayment of a college housing loan if—

(1) The prepayment is made from non-Federal sources;

(2) The prepayment is made on a loan both issued before October 1, 1986 and outstanding for at least five years;

(3) The prepayment is not derived from proceeds of obligations, the income of which is exempt from taxation under the Internal Revenue Code of 1954; and

(4) The prepayment is in an amount determined in accordance with paragraph (c) of this section;

(c) The Secretary determines the amount of a prepayment for a college housing loan based on—

(1) Current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to that of the loan to be prepaid;

(2) Current fair market value of outstanding marketable obligations that are of comparable quality to that of the loan to be prepaid;

(3) Current and anticipated administrative costs incurred by the Secretary in servicing the loan to be prepaid; or

(4) Current net proceeds that the Secretary would receive from nongovernmental investors, if the loan to be prepaid were purchased by such investors on the open market.

(Section 762 (c), (d), (e) of the Higher Education Act of 1965, as added by the Higher Education Amendments of 1986, Pub. L. No. 99-498)

PART 617—FINANCIAL ASSISTANCE FOR CONSTRUCTION, RECONSTRUCTION, OR RENOVATION OF HIGHER EDUCATION FACILITIES

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AUTHORITY: 20 U.S.C. 1132a *et seq.*, unless otherwise noted.

SOURCE: 45 FR 28669, Apr. 29, 1980, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—General Provisions

§ 617.1 Definitions.

Academic facilities, as defined in section 782(1)(A) of the Act, are further defined and subdivided into the following categories:

(a) *Instructional and library facilities* means—

(1) All rooms or areas used regularly for instruction of students, for faculty offices, or for library purposes; and

(2) Service areas that adjoin and are used in connection with the rooms or areas referred to in paragraph (a)(1) of this section.

(b) *Instruction-related facilities* means—

(1) All rooms or areas—other than instructional and library facilities—used for purposes related to the instruction of students or for research or for the general administration of the educational or research programs of an institution of higher education; and

(2) Service areas that adjoin and are used in conjunction with the rooms or areas referred to in paragraph (b)(1) of this section.

(c) *Health-care facilities*, as authorized under Titles VII A and C, means—

(1) Infirmaries and all other rooms or areas used for medical examination or treatment of students and institutional personnel; and

(2) Service areas that directly serve the rooms or areas referred to in paragraph (c)(1) of this section.

(d) *Related supporting facilities* means all other areas and facilities necessary for the use, operation, and maintenance of instructional and library facilities, instruction-related facilities, or health care facilities. This term includes building service and circulation areas and central maintenance and utility facilities that serve more than one building, to the degree that these central facilities are used to serve academic facilities eligible under Title VII of the Act.

(e) *Public health type facilities* means facilities as defined in section 782(1)(B)(v) of the Act (Definitions), if these facilities are owned, operated, and maintained by the institution of higher education requesting the approval of a Title VII E project and if—

(1) Funds available for the project are used solely for conversion or modernization to economize on the use of energy resources; and

(2) The project is not limited to facilities described in section 782(1)(B)(v) of the Act.

(Authority: 20 U.S.C. 1132e-1(1)(B)(v))

Act means the Higher Education Act of 1965 (Pub. L. 89-329), as amended. Unless otherwise indicated, title references are to titles of the Act.

Assignable areas—

(a) Means square footage of floor space in facilities designed and available for assignment to specific functional purposes—such as instruction, research, and administration—and including purposes that are ineligible for assistance under Title VII—such as students' sleeping rooms, apartments, or chapel rooms.

(b) Does not mean—

(1) Areas used for general circulation within a building;

(2) Areas for public washrooms;

(3) Areas for building maintenance or custodial services; or

(4) Areas in central maintenance and utility facilities that exist only to support the operation and use of other structures on the campus and that are not available for assignment to specific functional purposes as illustrated in paragraph (a) of this section.

(Authority: 20 U.S.C. 1132e-1 (1) and (2))

Branch campus means, within an institution of higher education, a unit that—

(a) Is separately organized;

(b) Is located apart from the parent institution; and

(c) Meets in its own right the definition of an institution of higher education as defined in the Act.

(Authority: 20 U.S.C. 1132e-1(6))

Capacity/enrollment ratio means the ratio of (a) the square feet of assignable area of instructional and library facilities to (b) the total student clock-hour enrollment at the campus of an institution. For purposes of this definition, "student clock-hour enrollment" means the aggregate clock hours (sometimes called contact hours) per week in classes or supervised laboratory or shop work for which all resident students—i.e., students enrolled for credit courses on the campus—are enrolled as of a particular date. A campus having a formally established independent study program or programs may include systematically determined equivalents of class or laboratory hours.

(Authority: 20 U.S.C. 1132a-4)

Costs required by Section 504.

(a) This term refers to costs for determining eligibility for participation in the program of Federal assistance for the removal of architectural barriers to the handicapped. The term means the costs of reconstruction, renovation, or modification of facilities to remove architectural barriers or otherwise make facilities usable—in whole or in part—by persons with mobility impairments.

(b) However, the amount may not exceed costs necessary to meet the program accessibility standards of 34 CFR Part 104, the regulations implementing Section 504 of the Rehabilitation Act of 1973.

(c) These costs may include only those reconstruction, renovation, or modification costs ascribable to Section 504 that are necessary to make programs or activities accessible and that cannot be avoided through such means as reassignment of classes or other non-structural alternatives.

(d) These costs may also include—

(1) Costs already incurred prior to the filing of an application; and

(2) Costs that are related to facilities otherwise ineligible for Federal assistance under Title VII.

(e) However, these costs may not include—

(1) Costs incurred prior to, or under contract entered into prior to, June 3, 1977;

(2) Costs required in connection with facilities used for religious worship or for a school or department of divinity; or

(3) Costs—incurred or to be incurred—for which Federal grant or loan assistance has been provided or approved under any other Federal program regardless of the percentage of

those costs covered by the Federal assistance.

(Authority: 20 U.S.C. 1132d-11(a)(2)(A); H. Rept. 96-244, page 85)

Developing institution means an eligible institution as defined in Section 302 of Title III of the Higher Education Act of 1965 (20 U.S.C. 1052) and the regulations for the Strengthening Developing Institutions Program (34 CFR Part 624).

Equipment means a manufactured item that has an extended useful life, is not consumed in use, and has an identity and function that are not lost through incorporation into a different or more complex unit or substance. Equipment is further subdivided into two categories—built-in equipment and initial equipment—defined as follows:

(a) *Built-in equipment* means equipment that is a permanent part of a structure.

(b) *Initial equipment* means equipment—other than built-in equipment—necessary and appropriate for the initial functioning of a particular academic facility for that facility's specific purpose.

(Authority: 20 U.S.C. 1132e-1(2))

Financial hardship, for purposes of eligibility for assistance authorized by section 771(a)(2)(A) of the Act, means that the costs required by Section 504 exceed five percent of the applicant's average annual educational and general expenditures, as reported in the annual NCES survey "Financial Statistics of Institutions of Higher Education" for the three most recent institutional fiscal years.

(Authority: 20 U.S.C. 1132d-11(a)(2)(A); H. Rept. 96-244, page 85)

Full-time equivalent number of students means the following:

(a)(1) For purposes of determining State allotments—

(i) The number of full-time students enrolled in programs that consist wholly or principally or work normally creditable toward a bachelor's or higher degree;

(ii) One third of the number of part-time students enrolled in the programs referred to in paragraph (a)(1)(i) of this section;

(iii) Forty percent of the number of students enrolled in programs that are not chiefly transferable towards a bachelor's or higher degree; and

(iv) Twenty-eight percent of the remaining number of the students referredo in paragraph (a)(1)(iii) of this section.

(2) For the purpose of this computation, student enrollment figures for each fiscal year will be those in the most recent Department survey containing data on opening fall enrollments in higher education.

(Authority: 20 U.S.C. 1132a-1, 1132a-2)

(b)(1) For purposes of reporting undergraduate enrollment trends and projections in connection with an application for financial assistance for an individual institution under Title VII A of the Act, the "full-time equivalent number of students" may be defined by each State commission through a specific provision in its State plan.

(2) If a State plan does not define the term, "full-time equivalent number of students"—for application purposes—means the total number of full-time students plus one-third of the number of part-time students.

(c) For the purpose of the definition of "full-time equivalent number of students," full-time students are those carrying at least 75 percent of a normal student-hour load.

(Authority: 20 U.S.C. 1132a-4)

High absolute cost, for purposes of eligibility for assistance authorized by section 771(a)(2)(A) of the Act, means that the "costs required by Section 504" on the campus for which an application is submitted exceed $500,000.

(Authority: 20 U.S.C. 1132d-11(a)(2)(A); H. Rept. 96-244, page 85)

Institution or *institution of higher education* means that part of an educational institution that meets the requirements in section 1201(a) of the Act. The term "educational institution" is limited to establishments at which teaching is conducted.

(Authority: 20 U.S.C. 1141(a))

Period of Federal interest, in improvements financed in whole or in part by grants or loans for Title VII E purposes, means—

(a) With respect to a grant, a period of 10 years from the completion of the reconstruction or renovation; and

(b) With respect to a loan, the period in which the loan is outstanding.

(Authority: 20 U.S.C. 1132d-11(d))

Program accessibility, for purposes of Section 504—and as applied to projects for the removal of architectural barriers under Title VII E—is defined in 34 CFR 104.21 through 104.23.

Project means all or a portion of one or more structures—

(a) That are eligible for grant or loan assistance under a particular part of Title VII;

(b) For which grant or loan assistance is requested in a single application; and

(c) That are part of a unified construction, reconstruction, or renovation activity on the same campus.

(Authority: 20 U.S.C. 1132e-1(2))

Reconstruction or renovation project under Title VII E of the Act means a reconstruction or renovation project designed primarily to enable an institution to—

(a) Economize on the use of energy resources;

(b) Bring its academic facilities into conformity with the requirements of the act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968; or

(c) Bring its academic facilities into conformity with environmental protection or health and safety programs mandated by Federal, State, or local law, if those requirements were not in effect at the time the facilities were constructed.

(Authority: 20 U.S.C. 1132d-11(a))

Section 504 means Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, as amended) and the implementing regulations (45 CFR Part 84).

State commission means, in each State, the designated or established agency that is broadly representative of the public and of institutions of higher education in that State.

(Authority: 20 U.S.C. 1132a-3; 1142a)

State plan means the document—submitted by a State and approved by the Secretary—that describes the standards, methods, and administrative procedures the State commission uses to—

(a) Review each project proposed by an applicant in its State for Federal assistance under Title VII A of the Act;

(b) Determine and recommend the relative priority of that project; and

(c) Determine and recommend for that project the Federal share of the costs eligible for Federal financial assistance.

(Authority: 20 U.S.C. 1132a-3(a))

§ 617.2 Regulations that apply to the Title VII program.

(a)(1) Assistance provided under Title VII of the Act, except under Part C of that title, is subject to applicable provisions in the Education Department General Administrative Regulations (EDGAR), 34 CFR Part 75, with the following exceptions:

(i) Section 75.107, Applications for new grants under a discretionary grant program.

(ii) Sections 75.150 through 75.154, regarding State approval procedures.

(iii) Sections 75.155 through 75.160, regarding State comment procedures.

(iv) Sections 75.200 through 75.206, regarding selection of new projects.

(v) Sections 75.215 through 75.222, regarding selection procedures.

(vi) Section 75.232, The cost analysis; basis for grant amount.

(vii) Section 75.233, Setting the amount of the grant.

(viii) Sections 75.580 and 75.581, regarding coordination.

(2) Assistance under Part C of Title VII is subject to the provisions of EDGAR relating to construction, 34 CFR 75.600 through 75.615.

(Authority: 20 U.S.C. 1232(a)(1))

(b) Assistance provided under Title VII is also subject to the applicable provisions in this part.

(Authority: 20 U.S.C. 1132a-1132e-1)

§ 617.3 [Reserved]

§ 617.4 Fiscal control and fund accounting procedures by State commissions.

To insure proper disbursement of and accounting for Federal funds paid to a State commission for the administration of its State plan, the plan must contain the fiscal control and fund accounting procedures that the Secretary requires.

(Authority: 20 U.S.C. 1132a-3; 34 CFR Part 75-EDGAR)

§ 617.5 Retention of records by State commissions.

A State commission shall—

(a) Establish a complete file on each Title VII A application;

(b) Inform applicants of official actions and determinations by letter or similar type of correspondence;

(c) Retain records regarding each application for at least two years after final action with respect to that application; and

(d) Maintain for at least three years a full record of—

(1) All hearings on appeals under section 704(a)(5) (State plan) of the Act; and

(2) All proceedings by which it establishes priorities and recommended Federal shares for eligible projects considered as of each specified closing date.

(Authority: 20 U.S.C. 1132a-3(a))

§ 617.6 Determination of costs eligible for Federal assistance.

(a) In general, if an applicant submits an application for assistance under Title VII A, VII B, VII C, or VII E of the Act, the Secretary determines separately for each proposed project the costs eligible for Federal assistance. The Secretary bases the determination on the following:

(1) The date on which the applicant incurred or contracted for a given cost.

(2) Whether the cost is an allowable development cost, as defined in section 782(3) of the Act (Definitions).

(3) Whether the applicant has incurred that cost in accordance with these regulations.

(4) That portion of the facility that is eligible under the type of assistance for which the applicant has submitted the application.

(5) The amount of any other Federal financial assistance the applicant has obtained or is assured of obtaining for the project.

(b) If, under the Act, an applicant files for Federal assistance for a project for the first time on or after the effective date of these regulations, the Secretary excludes the following from eligible development costs:

(1) Any cost for land incurred more than two years before the applicant files the application.

(2) Any cost for land in connection with an application for reconstruction or renovation.

(3) Any cost for the acquisition of a structure incurred more than one year before the applicant files the application.

(4) Any cost for the acquisition of a structure in connection with an application for reconstruction or renovation.

(5) Any cost for initial equipment incurred before the date the applicant files the application.

(6) Any cost for construction, reconstruction, renovation, or built-in equipment if the contract was entered into—

(i) Before the date the applicant filed the application; and

(ii) Before the Secretary concurred in the awarding of the contract.

(c) In order to assume the eligibility of costs, a grantee must obtain approval of those costs—

(1) Before advertising for or soliciting bids; and

(2) Before awarding any contract for construction, reconstruction, or renovation under the Act.

(d) The Secretary approves costs only after the Secretary or the appropriate official of another Federal agency has approved Federal assistance for the construction, reconstruction, or renovation of the facility.

(e)(1) If an applicant submits an application for Federal assistance for a project proposed under section 771(a)(2)(A) of the Act, the Secretary bases the determination of costs eligible for assistance on—

(i) The provisions of paragraphs (a) through (d) of this section (§ 617.6); and

(ii) That portion of "costs required by section 504" which is—

(A) Otherwise eligible under this section (§ 617.6); and

(B) In excess of the minimum costs required for an applicant to qualify for assistance under the definition of "financial hardship" or the definition or "high absolute costs."

(2) In addition to costs excluded under paragraph (b) of this section, ineligible costs under paragraph (e)(1) of this section include—

(i) Any costs required under Section 504 to make accessible facilities that do not meet the definition of "academic facilities" as contained in Section 782(1) of the Higher Education Act of 1965. If a facility is a combination of academic facilities and nonacademic facilities, the primary use of the facility determines the overall eligibility of the costs involved in connection with the facility; and

(ii) Costs required by section 504 in connection with any facility acquired by the applicant after June 3, 1977.

(Authority: 20 U.S.C. 1132a-6(a)(2)(F), 1132e-1 (3) and (4) and 1132d-11(a)(2)(A))

§ 617.7 Urgency of need for projects of public institutions.

(a) This section does not apply to projects authorized under Title VII E.

(b)(1) In addition to other eligibility requirements in the Act and these regulations, an application from a public institution of higher education must meet the requirements of urgency as described in paragraph (b)(2) of this section.

(2) Unless the Secretary or the State commission, as appropriate, determines that the need for the project is urgent in terms of the capacity of other public institutions of higher education that enroll students from basically the same geographic areas as the applicant does—

(i) The Secretary—in the case of an application under Part B, C, or D of Title VII—does not approve the application; and

(ii) The commission—in the case of an application under Part A—may not approve the application.

(c)(1) The Secretary or the commission, as appropriate, also bases a determination of urgency of need under paragraph (b) of this section on whether—

(i) The applicant has a history of not serving persons of a particular race, color, or national origin; or

(ii) There are within the geographic area the applicant serves one or more other public institutions of higher education that have a history of not serving persons of a particular race, color, or national origin.

(2) If either condition described in paragraph (c)(1) of this section is present, the Secretary determines—or the commission, in the case of an application under Part A, shall determine—that urgency of need does not exist unless the applicant provides evidence satisfactory to the Secretary—or to the commission, in case of an application under Part A—that the proposed project and the proposed use of the facilities to be constructed, reconstructed, or renovated under the project will not—

(i) Establish or increases the identifiability of any of the institutions on the basis of race, color, or national origin; or

(ii) Impede the elimination of the identifiability of any of the institutions on the basis of race, color, or national origin.

(Authority: 20 U.S.C. 1132a-4, 1132b, 1132c-4, 1132d-1 and Shannon vs. HUD, 436 F.2d 809)

§ 617.8 Grants and loans for reconstruction and renovation projects authorized under Title VII E of the Act.

An application for grant or loan assistance for a reconstruction or renovation project under Title VII is subject to the following provisions:

(a) The Secretary does not consider a project having a total eligible cost, as specified in paragraph (b) of this section of less than $10,000.

(b)(1) The Secretary bases the determination of costs eligible for Federal assistance on a review of each application.

(2)(i) The Secretary considers as eligible only those costs specifically related to one—or a combination—of the reconstruction or renovation purposes specified in the definition of "Reconstruction or renovation project under Title VII E of the Act" in § 617.1.

(ii) However, the Secretary may approve costs not specifically related to the purposes in that definition to an extent not to exceed 10 percent of costs that are specifically related, if the Secretary finds that the costs not specifically related are part of the project for which Federal assistance is requested.

(c) The Secretary does not approve an application unless it contains sufficient information to demonstrate that the applicant's proposed project meets the following requirements:

(1) For assistance for energy conservation, the applicant—

(i) Must have accomplished minimum energy conservation measures required by the Secretary; and

(ii) Must have demonstrated that the proposed project will result in significant savings in energy consumption or related costs.

(2) For assistance for the removal of architectural barriers for the handicapped, the project must—

(i) Be deemed necessary to provide program accessibility under Section 504; and

(ii) Meet the most recently published standards of the American National Standards Institute (ANSI Standards).

(Authority: 20 U.S.C. 1132d-11(a)(2)(A); H. Rept. 96-244, page 85)

(3) For assistance in meeting environmental or health and safety requirements, the project must be required by local, State, or Federal law.

(4)(i) An application involving a combination of the purposes in paragraphs (c)(1), (2), or (3) of this section must satisfy each of the specified requirements.

(ii) Any portion of an application not meeting the applicable requirements is ineligible for assistance, except as permitted under paragraph (b)(2)(ii) of this section.

(d) The Secretary awards a grant or loan on condition that the recipient award the contract or begin on-site work within 18 months from the date of loan approval or the date of grant approval or—in the case of a recipient having both a grant and a loan—the earlier of the date of loan approval or the date of grant approval.

(e) If, during the period of Federal interest, as defined in § 617.1, the recipient of a grant or loan ceases to use the reconstructed or renovated facilities as academic facilities, the recipient—or its successor in title or possession—shall—

(1) Immediately repay any outstanding loan balance plus interest accrued to the date of repayment; and

(2) Repay any grant in an amount whose ratio to the depreciated value of the improvement is the same as the ratio of the original grant to the original cost of the improvement. For this purpose the Secretary computes the depreciated value of the improvement by using the straight-line method at a rate of 10 percent a year from the date of the completion of the reconstruction or renovation.

(Authority: 20 U.S.C. 1132d-11)

Subpart B—Grants for Construction, Reconstruction, or Renovation of Academic Facilities under Title VII A of the Act

§ 617.11 Institutional eligibility.

(a) Two categories of institutions of higher education are eligible for assistance under Title VII:

(1) Under section 702 (Public Community Colleges and Public Technical Institutes) of the Act—

(i) Public community colleges;

(ii) Public technical institutes; and

(iii) Branch campuses of other types of public institutions of higher education, provided that—

(A) The parent institution offers four or more years of higher education;

(B) The branch campus offers the types of programs specified in section 782(6) (definition of "public community college and public technical institute") of the Act; and

(C) The branch campus is located in a community other than the community in which the parent institution is located.

(2) Under section 703 (Institutions of Higher Education other than Public

Community Colleges and Public Technical Institutes) of the Act, other institutions of higher education.

(b) An institution qualifies for grants under section 702 of the Act if the Secretary determines that—

(1) The institution meets the requirements of both of the following definitions in the Act:

(i) Section 782(6).

(ii) Section 1201(a) (definition of "institution of higher education"); and

(2) In the case of a public community college or public technical institute, the State commission has found that—

(i) The institution is organized principally to provide two-year academic programs of the types specified in section 782(6) of the Act; and

(ii) More than 50 percent of the institution's full-time equivalent student enrollment is in those types of programs.

(c) An institution qualifies for grants under section 703 of the Act if the Secretary determines that the institution does not meet the requirements of section 702 of the Act but does meet the requirements of section 1201(a) of the Act.

(d) An otherwise eligible institution of higher education or a cooperative graduate center board (as defined in section 782(8) of the Act) is eligible for grants under Title VII A to reconstruct or renovate graduate academic facilities to meet any of the purposes of Title VII E.

(Authority: 20 U.S.C. 1132a-1; 1132a-2; 1132d-11; 1132e-1(6); 1132e-1(8); 1141(a))

§ 617.12 Eligible applicants under section 771(a)(2)(A) of the Act.

(a) Eligible applicants for assistance to remove architectural barriers to the handicapped for purposes of program accessibility under Section 504 are institutions of higher education or cooperative graduate center boards that—

(1) Meet the eligibility requirements of § 617.11; and

(2) Demonstrate, to the satisfaction of the State commission, that their "costs required by Section 504" fall within the definition of "financial hardship" or the definition of "high absolute cost."

(b) If an applicant qualifies under both definitions in paragraph (a)(2) of this section, the State commission shall consider the application under the definition that is more advantageous to the applicant.

(Authority: 20 U.S.C. 1132(a)(2)(A); H. Rept. 96-244, page 85)

§ 617.13 State plans.

(a)(1) For each fiscal year that it desires to participate in the Title VII A program, a State shall submit a plan to the Secretary.

(2) The Secretary determines the form in which the State submits its plan and specifies the type of information that the State shall supply.

(3) The plan shall specify the criteria by which the State determines relative priorities of projects (as explained in § 617.14).

(4) The Secretary must receive the plan at least 60 days prior to the first closing date set out in the plan.

(5) The Secretary approves the plan if the Secretary is satisfied it meets the requirements of section 704(a) (submission and contents of State plans) of the Act.

(b) If the State intends to continue its existing plan for the following fiscal year, the Secretary must receive notification in writing at least 60 days before the first closing date of that next fiscal year.

(c) *Amendments to State plans.* (1) The Secretary determines the form in which the State submits a proposed amendment to its plan.

(2) The State may at any time submit an amendment to its plan.

(3) The State shall uniformly apply any amendment to all applications received by the first closing date following the approval of that amendment.

(4) Unless otherwise specified in the State plan, an amendment becomes effective immediately when the Secretary approves it.

(5) Paragraph (c)(4) of this section does not apply to an amendment that—

(i) Affects the standards and methods for determining priorities;

(ii) Alters the Federal share; or

(iii) Changes a closing date.

(6) The types of amendments referred to in paragraph (c)(5) of this section become effective—

(i) No sooner than 60 days after the Secretary receives them; and

(ii) In no case, no sooner than 30 days after the Secretary approves them.

(7) Amendments of a State plan required by legislation or new or revised regulations may be effective immediately after the Secretary approves them.

(Authority: 20 U.S.C. 1132a-3)

§ 617.14 Criteria for determining relative priorities of eligible projects.

The following requirements govern the standards and methods for determining priorities in ranking projects under a State plan:

(a) A State shall specify separately in its plan criteria and methods for determining the relative priorities of eligible projects for the construction, reconstruction, or renovation of academic facilities for—

(1) Public community colleges and public technical institutes; and

(2) Other institutions of higher education.

(b)(1) The State commission shall assign points to each criterion according to an objective method contained in the State plan.

(2) In determining relative priorites for institutions and branch campuses, the commission shall apply each criterion uniformly.

(c) The State shall develop its critiera and methods for determining relative priorities on the basis of—

(1) Information to be included by the applicant in the application form that the Secretary prescribes;

(2) Supplemental information requested from all applicants by the State commission; and

(3) Data on file with the State commission, including public reports or publications.

(d) The State shall specify in its plan criteria and methods for determining priority between or among applications receiving identical scores.

(e) Among its criteria for determining relative priorities for institutions and branch campuses, the State shall include the following:

(1) *Increase in enrollment.* (i) One or more criteria shall deal with the extent of the estimated numerical or percentage increase, or both, in full-time equivalent undergraduate student enrollment at the campus at which the construction, reconstruction, or renovation is to take place.

(ii) This estimated increase shall cover five fall terms separately, starting with the fall term preceding the closing date for which the application is being considered and each of the next four fall terms after that closing date.

(iii) The State commission shall assign at least five percent of the total possible point score to this criterion.

(iv) The provisions of paragraphs (e)(1)(i), (ii), and (iii) of this section shall not apply to an application under Title VII E.

(2) *Increase in capacity.* (i) One or more criteria shall deal with the amount or percentage, or both, by which the proposed project will increase the assignable area in instructional, library, and health care facilities at that campus.

(ii) The commission shall assign at least 10 percent of the total possible point score to this criterion.

(iii) The provisions of paragraphs (e)(2) (i) and (ii) of this section shall not apply to an application under Title VII E.

(3) *Use of existing facilities.* (i) One or more criteria shall deal with the effective use of existing academic facilities.

(ii) The commission shall assign at least five percent of the total possible point score to this criterion.

(4) *Enrollment of low-income students.* (i) A criterion shall deal with the extent of the applicant's commitment to the enrollment of a substantial number of students from low-income families.

(ii) The commission shall assign at least five percent of the total possible point score to this criterion.

(5) *Enrollment of disabled veterans.* (i) A criterion shall deal with the extent of the applicant's commitment to the enrollment of a substantial number of disabled veterans returning to civilian life.

(ii) The commission shall assign at least five percent of the total possible point score to this criterion.

(f) The State plan may include additional objective criteria for determining relative priorities as long as none of those criteria is inconsistent with the criteria specified in paragraph (e) of this section.

(g) The State plan may not consider adverse to the ranking of an application an institution's readiness to admit out-of-State students.

(h) The State plan may not consider any of the following as a priority either in favor of or adverse to the ranking of an application:

(1) The type of control or sponsorship of the applicant institution.

(2) The fact that the project had commenced before the date of the application.

(3) The fact that part of the cost of the project had been incurred prior to, or under a contract entered into before, the date of the application.

(i) The commission shall insure that all potential applicants are informed about the forms, definitions, and supplementary data sources that the commission uses—

(1) In applying the required and optional criteria in the State plan; and

(2) In determining relative priorities.

(Authority: 20 U.S.C. 1132a-5(a))

(j) For projects authorized under section 771(a)(2)(A) of the Act—for the removal of architectural barriers for purposes of Section 504 accessibility—the State plan shall, in addition to the criteria in paragraphs (e) (3), (4), and (5) of this section, include at least the following criteria:

(1) *Amount of assignable square feet of academic facilities to be made accessible by the proposed project.* (i) One or more criteria shall deal with the extent to which eligible academic facilities will be made accessible by the proposed project.

(ii) The commission shall assign at least 10 percent of the total possible point score to this criterion.

(2) *Percent of assignable square feet of academic facilities to be made accessible by the proposed project.* (i) One or more criteria shall deal with the percentage of assignable square feet of eligible academic facilities that will be made accessible on that campus by the proposed project.

(ii) The commission shall assign at least 10 percent of the total possible point score to this criterion.

(3) *Percent of "costs required by Section 504" incurred by the applicant as of the application filing date.* (i) One or more criteria shall give recognition to the extent to which an institution undertook compliance with Section 504 without Federal financial assistance.

(ii) The commission shall assign at least 10 percent of the total possible point score to this criterion.

(4) *Age of buildings.* (i) One or more criteria shall deal with the percentage of gross square feet of structural space—on the applicant's campus—constructed before January 1, 1960 or some other uniformly applicable date that the State commission considers more appropriate.

(ii) The commission shall assign at least 10 percent of the total possible point score to this criterion.

(5) *"Costs required by Section 504" per full-time equivalent student enrollment.* (i) One or more criteria shall deal with the extent of the Section 504 compliance cost per full-time equivalent student enrolled at the applicant institution.

(ii) The commission shall assign at least 15 percent of the total possible point score to this criterion.

(6) *"Costs required by Section 504" per square foot of total assignable areas.* (i) One or more criteria shall deal with the extent of the Section 504 compliance costs per square foot of total assignable areas at the institution or branch campus for which application for assistance has been submitted.

(ii) The commission shall assign at least 15 percent of the total possible point score to this criterion.

(7) *Optional.* The State commission may assign in the State plan 15 percent of the total possible point score to other criteria the commission determines appropriate, provided those criteria are approved by the Secretary.

(Authority: 20 U.S.C. 1132d-11(a)(1)(A); H. Rept. 96-244, page 85)

§ 617.15 Conditions for grant approval.

(a) With the exception of paragraphs (e) and (f) of this section, this section does not apply to an application for a project authorized under Title VII E.

(b) The Secretary approves an application under Title VII A—other than an application under Title VII E—only if the Secretary is satisfied, on the basis of information submitted with the application, that—

(1) The facilities included in the proposed project are intended predominantly for—

(i) Programs of undergraduate instruction or programs of extension and continuing education;

(ii) Health care to students or personnel of the institution; or

(iii) Both;

(2) The applicant meets the requirement of section 705 (Eligibility for Grants) of the Act; and

(3) The application meets all requirements of section 707(a) submission and contents of applications of the Act.

(c)(1) In order to determine that an institution of higher education is eligible for a grant in accordance with section 705 of the Act, a State commission must determine that—

(i) The project proposed by the institution will provide a substantial expansion of student enrollment capacity, health care capacity, or extension and continuing education capacity; and

(ii) A substantial expansion or creation of capacity is urgently needed.

(2)(i) To establish that a proposed project will provide a substantial expansion of student enrollment capacity, health care capacity, or extension and continuing education capacity, the State commission must determine that—

(A) The increase in any one of the three types of capacities will exceed 10 percent of current capacity; or

(B) In the case of enrollment capacity, the increase will be not less than 10,000 square feet of instructional and library space.

(ii) For purposes of paragraphs (b)(1)(i) and (b)(2)(i) of this section—

(A) "Student enrollment capacity" means instructional and library facilities;

(B) "Health care capacity" means infirmaries and all other rooms or areas designed to be used for medical examination or treatment of students and institutional personnel; and

(C) "Extension and continuing education capacity" means academic facilities used principally for extension and continuing education programs of the institution.

(3) To establish that substantial expansion or creation of capacity is urgently needed, the State commission must consider the following:

(i) The planned enrollment growth of the institution. This growth must be at least 10 percent over four years.

(ii) The use of existing space—as indicated by a low capacity/enrollment ratio or another measure of use—at the campus the applicant has proposed for expansion; and

(iii) Whether there are serious deficiencies in the quality of the applicant's programs due to inadequacies of space.

(4) As used in section 705 of the Act, "other construction, reconstruction, or renovation to be undertaken within a reasonable time" means construction, reconstruction, or renovation approved to start within one year of the date of the application.

(d) In determining whether an institution of higher education would experience a decrease in enrollement capacity if an urgently needed facility were not constructed, reconstructed, or renovated, the Secretary gives consideration to—

(1) The age and condition of instructional and library facilities to be withdrawn from use; and

(2) Any other factors that will cause facilities to be functionally inadequate for instructional or library purposes.

(Authority: 20 U.S.C. 1132a-6)

(e) The Secretary approved an application under Title VII E only if the Secretary is satisfied, on the basis of information submitted with the application, that—

(1) The application meets the basic provisions of paragraphs (a) and (c) of § 617.8; and

(2) The application is recommended by the State commission according to the priority system established in the State plan.

(Authority: 20 U.S.C. 1132d-11(a))

(f) In the case of applications for assistance under section 771(a)(2)(A) of the Act, the State commission, prior to ranking those applications, shall review the applications to determine that—

(1) Costs claimed as qualifying for "financial hardship" or "high absolute cost" are or were "costs required by Section 504"; and

(2) The proposed projects are required for compliance with section 504.

(Authority: 20 U.S.C. 1132d-11(a)(2)(A); H. Rept. 96-244, page 85)

§ 617.16 Application closing dates.

(a) A State shall establish in its State plan closing dates for submission of applications for funds allotted under sections 702 and 703 of the Act, including projects authorized by Title VII E.

(b) The State plan shall provide at least two closing dates during a Federal fiscal year for each category of institution under § 617.11.

(c) All closing dates established in the State plan shall be between October 31 and May 15.

(d) If the Secretary permits, after determining the presence of unusual circumstances—

(1)(i) The State commission may waive a closing date if the commission gives reasonable prior notice of waiver to the institutions that may be affected by that date.

(ii) In that case an applicant may file an application before the next closing date established by the State commission for that fiscal year;

(2) The State plan may provide for a closing date after May 15; or

(3) Both paragraphs (d)(1) and (d)(2) of this section.

(Authority: 20 U.S.C. 1132a-3)

§ 617.17 Submission of application to State commission.

(a) An applicant shall submit directly to its State commission—

(1) Its application; and

(2) Any supplemental information the commission may require.

(b) The commission shall officially record the date of receipt of the application.

(c) An applicant may not invite bids for construction, reconstruction or renovation under the project before submitting its initial application to the commission.

(d)(1) However, paragraph (c) of this section does not apply if an agency of the United States has already approved assistance for the project under Title VII or some other Federal construction program.

(2) In that case the commission shall consider the application at only those closing dates that occur no later than 12 months after the applicant has begun the construction, reconstruction, or renovation.

(Authority: 20 U.S.C. 1132a-6(a)(2)(C))

§ 617.18 Verification of application data and institutional and project eligibility.

(a) Before determining the relative priority or Federal share for any application under Title VII A, the State commission shall determine that—

(1) The data in the application are valid; and

(2) The institution and the project meet basic eligibility requirements of the Act and the regulations governing the administration of the Act.

(b)(1) If, in the opinion of the commission, the eligibility of an institution is questionable, the commission shall promptly forward a copy of the application to the Secretary for a clarification of that eligibility.

(2) In that case the commission shall—

(i) Continue to process and rank the application as if that application were eligible; and

(ii) Delay final action on that application until the Secretary notifies the commission regarding the applicant's eligibility.

(Authority: 20 U.S.C. 1132a-6(a)(2)(C))

§ 617.19 Determination of relative priorities and Federal shares.

A State commission shall—

(a) Consider each eligible application received by each specified closing date together with all other applications in the same category of eligible applicants (§ 617.11); and

(b) Assign to that application, in accordance with the provisions of the State plan, its—

(1) Relative priority; and

(2) Recommended Federal share.

(Authority: 20 U.S.C. 1132a-6(a)(2)(D) and (E))

§ 617.20 Procedures if funds are insufficient.

(a)(1) If, under a State's allotment, funds are insufficient to cover all eligible applications that the State commission considers in a particular category as of a particular closing date, the commission shall follow the procedures in paragraph (a)(2) of this section.

(2) The commission shall determine—according to the State plan—the full Federal share for each project, in order of relative priority, until the remaining funds are insufficient to provide the full Federal share for the next project in order of priority.

(b)(1) The State plan may provide for apportionment of the State's allotment among closing dates during the same fiscal year.

(2) In that case the plan may also provide for the commission to make available immediately—from funds apportioned to later closing dates, if any, in the same fiscal year—funds sufficient to provide a full Federal share, as initially calculated, for the first project for which only part of the Federal share would otherwise have been available.

(c) If the State plan contains the provisions described in both paragraphs (b)(1) and (b)(2) of this section, the commission shall—

(1) Make available immediately funds sufficient to provide a full Federal share, as initially calculated, for the first project for which only part of the Federal share would otherwise have been available; and

(2) Carry over to any subsequent closing dates in the same fiscal year all other eligible but unfunded applications in that category without requiring the applicants to submit new applications for those projects for that fiscal year.

(d) If the State plan contains the provision described in paragraph (b)(1) of this section but does not contain the provision described in paragraph (b)(2) of this section, the commission—

(1) Shall carry over to any subsequent closing dates in the same fiscal year all eligible applications for which a full Federal share is not available; and

(2) Is prohibited from requiring those applicants to submit new applications for those projects for the same fiscal year.

(e)(1) If the State plan does not apportion the State's allotment among closing dates or if the closing date is the last closing date in a fiscal year, the commission shall offer the remaining Federal funds as a partial Federal share for the first project—in order of relative priority—for which less than the full Federal share, as calculated, is available.

(2) The commission or the applicant may not regard the offer and acceptance of a lesser Federal share as diminishing the scope of the project for which the partial share is accepted.

(3) The commission shall give the applicant that agrees to accept a partial Federal share the option to submit a supplemental application, as provided in § 617.27.

(4) If an applicant declines to accept the commission's offer of a partial Federal share, the commission shall carry over to the next closing date, if any, in the same fiscal year—

(i) The remaining funds; and

(ii) The application for which an applicant declined the partial Federal share.

(Authority: 20 U.S.C. 1132a-5(b))

§ 617.21 Recommendations by State commission.

On completing its consideration of applications for each closing date, but no later than 45 days after each closing date, a State commission shall forward the following to the Secretary:

(a) A current application summary report, in a form prescribed by the Secretary, for each category of applicants. The commission shall list in its report—

(1) Each application received for that closing date, including those carried over from the previous closing date;

(2) Each application returned to an applicant and the reason for the return of that application; and

(3) The priority and Federal share—determined according to the State plan—for each project recommended for Federal assistance.

(Authority: 20 U.S.C. 1132a-3(a)(6))

(b) For each project to which the commission has assigned a priority high enough to enable that project to qualify for a Federal grant within the amount of funds available in the allotment for the State, the application form and exhibits in the number of copies the Secretary requests.

(Authority: 20 U.S.C. 1132a-3(a)(4)(B))

§ 617.22 Notification to applicants.

A State commission shall—

(a) Promptly notify an applicant of the results of all determinations regarding its application as of each closing date; and

(b) On request and according to procedures that the commission has established, give an applicant access to the records of official proceedings on the basis of which the commission determined relative priorities and Federal shares of all applications.

(Authority: 20 U.S.C. 1132a-3(a)(2), (4), and (5))

§ 617.23 Disposition of applications not recommended for grants.

(a) A State commission shall notify unsuccessful applicants when funds are no longer available in the State allotments for that fiscal year.

(b) The commission may retain an application that it does not recommend for a grant within the fiscal year in which the applicant filed that application.

(c) The commission may reconsider for the following fiscal year an application that it has not recommended for a grant if the applicant requests the commission, in writing, to reconsider its application in that subsequent year.

(d) If the commission carries over an application from one closing date to the next, the applicant shall amend those portions of the application requiring data on enrollments and available instructional and library or health care facilities or both—as appropriate—to reflect most recent opening fall term data.

(Authority: 20 U.S.C. 1132a-6(a)(1))

§ 617.24 Grant award.

For a project application that meets all eligibility requirements for an award of funds under Title VII A and has been recommended by the State commission, the Secretary—

(a) Approves the application;

(b) Reserves Federal funds from the appropriate State allotment; and

(c) Prepares and sends to the applicant a grant award that contains the pertinent terms and conditions of the grant.

(Authority: 20 U.S.C. 1132a-6(a) and (c))

§ 617.25 Amendments.

(a) Any time prior to a closing date for which an applicant asks its State commission to consider its application, the applicant may make changes in the application by informing the commission, in writing, of those changes.

(b) After the closing date the commission may not permit changes in the application except for corrections or the submission of additional data the commission requests.

(Authority: 20 U.S.C. 1132a-6(a)(1))

§ 617.26 Project changes.

After a State commission has forwarded a recommended project to the Secretary, the Secretary does not approve any substantial changes in the nature or scope of the project until the Secretary determines that those changes would not have affected the commission's original recommendation of the project for a grant.

(Authority: 20 U.S.C. 1132a-6(a)(2)(C))

§ 617.27 Supplemental applications.

(a) If an applicant has received approval of a Title VII A grant but has not received the maximum Federal share allowable under the Act or the applicable State plan, the applicant may file a supplemental application.

(b) A supplemental application—

(1) Must be in the form of a written request to the State commission; and

(2) Must contain all amended application data necessary to enable the commission to assign a priority to the application and to calculate a revised eligible development cost of the project, if applicable.

(c) However, the commission may not consider a supplemental application for—

(1) A closing date that is more than 12 months after the applicant has started construction, reconstruction, or renovation; or

(2) A closing date that is after the date the applicant has substantially completed the project.

(Authority: 20 U.S.C. 1132a-6(b))

§ 617.28 Standards for determining Federal share of eligible projects.

(a) A State plan must—

(1) Specify as a uniform percentage the Federal share of the costs eligible for Federal financial assistance; or

(2) Prescribe the standards or methods by which the State commission determines the Federal share of the costs.

(b) The Federal share of project costs may not exceed the percentage of the eligible development cost as specified in section 706(b)(2) of the Act.

(c) Standards and methods for determining the Federal share of eligible costs must—

(1) Be objective and simple to apply;

(2) Be based on the data that applicants are required to include in their applications; and

(3) Be consistent with the standards in the State plan for determining relative priorities.

(Authority: 20 U.S.C. 1132a-5(b))

(d) For projects for the removal of architectural barriers authorized under Title VII E, the Federal share may—

(1) Not exceed 50 percent of the eligible project cost if the applicant qualified for assistance on the basis of "financial hardship"; or

(2) Not exceed 25 percent of the eligible project cost if the applicant qualified for assistance on the basis of "high absolute cost."

(Authority: 20 U.S.C. 1132a-5(b)(2); 1132d-11(a)(2)(A))

§ 617.29 Adjustments in the amount of Federal share.

(a) If the Secretary finds that the costs eligible for Federal assistance in a project are less than those provided for in the grant award, the Secretary redetermines the amount of the Federal share.

(b) The Secretary bases the amount of the revised grant on—

(1) The lesser eligible costs, using the State plan provisions that were in effect at the time the State commission recommended the project for a grant; and

(2) The assumption that sufficient funds were available in the State allotment at that time to provide the maximum Federal share.

(c)(1) If the Secretary finds that the redetermined share is less than the maximum amount authorized by the grant, the Secretary reduces the grant accordingly.

(2) If the Secretary finds that there has been an overpayment of Federal funds, the grantee shall immediately remit that overpayment to the Secretary.

(3) If the Secretary finds that the redetermined Federal share is equal to or greater than the maximum amount authorized by the grant, the amount of the grant shall be the Federal share.

(Authority: 20 U.S.C. 1132a-6(c))

Subpart C—[Reserved]

Subpart D—Loans for Construction, Reconstruction, or Renovation of Academic Facilities Under Title VII C of the Act

§ 617.51 Purpose and eligibility.

(a) The Secretary makes loans—under Title VII C of the Act—for the construction, reconstruction, or renovation of academic facilities.

(b) Those eligible for loans are—

(1) Institutions of higher education; and

(2) Higher education building agencies.

(c) No loan exceeds $5 million per campus for a Federal fiscal year.

(Authority: 20 U.S.C. 1132c(a)(2), 1132d-11(a))

§ 617.52 Submission of applications.

(a) An applicant for a loan shall submit its application at the time, in the manner, and containing the information that the Secretary specifies.

(b) The applicant may not invite bids under the project before submitting its application to the Secretary.

(c)(1) The applicant shall send a copy of its application to the State commission before submitting it to the Secretary.

(2) The commission shall review and evaluate the application and provide comments to the Secretary regarding—

(i) Use of space;

(ii) Enrollment data; and

(iii) The overall need for the facility—or for the reconstruction or renovation of facilities—for which the applicant has requested assistance.

(3) Following its review, the commission shall furnish its evaluation to the applicant.

(4) If the applicant does not agree with the evaluation, the applicant may include with its application to the Secretary a statement supporting its position.

(d) The commission shall submit the application to the Secretary together with all State clearinghouse comments required by OMB Circular A-95.

(e) If the State commission is not the agency serving as the State postsecondary education commission authorized under section 1202(a) of the Act, the State commission shall afford the latter the opportunity to review and evaluate an application filed under Title VII C.

(Authority: 20 U.S.C. 1132c(a)(2), 1132d-11(a), 1142a)

§ 617.53 Special terms and conditions.

Before approving a loan the Secretary requires the following evidence and assurances:

(a) Satisfactory evidence that the applicant has or will have a full title or interest in the site, including right of access, that is sufficient to insure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(b) Satisfactory evidence that the applicant is able to comply with the appropriate terms and conditions for repayment of the loan.

(c) Satisfactory evidence that the applicant has the necessary legal authority to—

(1) Finance; construct, reconstruct, or renovate; and maintain the proposed facilities;

(2) Apply for and receive the proposed loan; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan.

(d)(1) Satisfactory assurances that the project—

(i) Is related to a plan for development of the applicant institution, branch campus, or higher education building agency; and

(ii) Is associated with—

(A) A planned increase in student enrollment; or

(B) A planned improvement in the instructional programs offered by the applicant.

(2) However, with respect to reconstruction and renovation projects authorized under Title VII E, the Secretary does not require the assurances specified in paragraph (d)(1) of this section.

(e)(1) Satisfactory assurance that the applicant will not, without the consent of the Secretary, mortgage to others during the life of the loan the facility constructed, reconstructed, or renovated with the aid of the loan.

(2) However, a borrower does not require the Secretary's consent to mortgage facilities reconstructed or renovated under Title VII E unless the Secretary has a mortgage on the facilities as security for a loan under this subpart.

(Authority: 20 U.S.C. 1132c-2(b)(1))

(f)(1) Satisfactory assurance that the applicant will finance not less than 20 percent of the development cost of the facility from non-Federal sources.

(2) However, the Secretary waives this assurance for an institution that has qualified as a developing institution under Title III of the Act.

(Authority: 20 U.S.C. 1055(b), 1132c-1(a), 1132d-11)

§ 617.54 Determination of non-availability of equally-as-favorable terms and conditions.

(a) The Secretary considers making a loan only if the Secretary finds that the applicant is unable to secure from other sources a loan with terms and conditions equally as favorable as the terms and conditions applicable to loans under this part.

(b) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may establish, including public advertising for bids.

(Authority: 20 U.S.C. 1132c-1(a)(2), 1132d-11(a))

§ 617.55 Forms of evidence of indebtedness.

An applicant shall furnish to the Secretary evidence of indebtedness in the form the Secretary prescribes in the loan agreement and in the terms and conditions of the loan agreement.

(Authority: 20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.56 Security for loans.

(a) Except as provided in paragraph (b) of this section, an applicant shall secure a loan in a manner the Secretary finds will reasonably assure repayment. The security may be one or a combination of the following:

(1) A first mortgage on the facilities and site of those facilities.

(2) Negotiable stocks or bonds of a quality and value acceptable to the Secretary.

(3) A pledge of unrestricted and unencumbered income from an endowment or other trust fund acceptable to the Secretary.

(4) A pledge of a specified portion of the applicant's annual general or special revenues acceptable to the Secretary.

(5) General obligations to the applicant by a State or local public body.

(6) Other types of security the Secretary may find acceptable in specific instances.

(Authority: 20 U.S.C. 1132c-1(b))

(b) However, the Secretary may make an unsecured loan, on a reconstruction or renovation project authorized under Title VII E, if the loan is for no more than seven years.

(Authority: 20 U.S.C. 1132d-11(c))

§ 617.57 Length and maturity of loans.

(a) The maximum repayment period for a loan—

(1) Under Title VII C shall be 30 years, unless the Secretary finds that a longer repayment period is required; and

(Authority: 20 U.S.C. 1132c-1(b))

(2) Under Title VII E, shall be 20 years.

(Authority: 20 U.S.C. 1132d-11(c))

(b) In no case, however, may a loan repayment period exceed the estimated useful life of the facilities to be constructed, reconstructed, or renovated with the aid of the loan.

(c) Unless the Secretary authorizes otherwise, the borrower shall make repayment in substantially level total annual installments of principal and interest.

(d) The Secretary may approve a loan that does not mature serially if that type of loan is necessary to be compatible with an applicant's total financial planning.

(Authority: 20 U.S.C. 1132c-2(b)(1))

§ 617.58 Opinion of bond counsel.

(a) At appropriate stages in a loan application and development procedure, an applicant shall submit—or arrange to have submitted—to the Secretary opinions of bond counsel—or of legal counsel, as provided in paragraph (d) of this section—with respect to—

(1) The legality of the proposed bond or note issue;

(2) The legal authority of the applicant to offer the issue and secure it by the proposed collateral; and

(3) The legality of the issue on delivery.

(b) As used in this section, "bond counsel" means a law firm or individual lawyer—

(1) Who is thoroughly experienced in the financing of construction, reconstruction, or renovation projects by the issuance of bonds;

(2) Whose approving opinions have previously been accepted by purchasers of bonds offered at public sales; and

(3) Who, if the borrower is a public institution or agency, is a recognized bond counsel in the municipal field.

(c) In each case the counsel shall present the following:

(1) A memorandum by the counsel, submitted with the loan application—

(i) Stating that the applicant has or will have authority to—

(A) Finance, construct, and maintain the project;

(B) Issue the proposed obligations; and

(C) Pledge or mortgage the assets or revenues that the applicant is offering to secure the loan; and

(ii) Citing the basis for the authority referred to in paragraph (c)(1)(i) of this section.

(2) A preliminary approving opinion of the counsel—submitted at the time the applicant proposes to advertise for bids for construction, reconstruction, or renovation—to the effect that when the bonds or notes described in the loan agreement are sold and delivered, they will—

(i) Comply with the applicable provisions of the loan agreement; and

(ii) Be valid and binding obligations of the issuer payable in accordance with their terms.

(3) A final approving opinion of the counsel—delivered at the same time as the delivery of the bonds or notes—stating that the bonds or notes—

(i) Are those described in the loan agreement and the authorizing proceedings;

(ii) Have been duly authorized, sold, and delivered to the Secretary; and

(iii) Consititute the valid and binding obligations of the issuer payable in accordance with their terms.

(d)(1) The Secretary may accept the opinion of legal counsel, other than a bond counsel as defined in paragraph (b) of this section, after considering such factors as—

(i) The amount, term, and security for the loan; and

(ii) The legal or financial complexity of the transaction.

(2) As used in paragraph (d)(1) of this section, "legal counsel" means a law firm or individual lawyer—

(i) Having experience in the financing of construction, reconstruction, or renovation projects; and

(ii) Whose opinions with regard to that type of financing have been previously accepted by responsible lenders or lending institutions.

(Authority: 20 U.S.C. 1132c-2(b)(1), 1132d-11(a))

§ 617.59 Determination of priorities for loan approvals.

(a)(1) The Secretary processes loan applications in the order and according to the standards and methods that the Secretary determines.

(2) The Secretary—

(i) Develops these standards and methods as may be necessary and appropriate to encourage distribution of the available loan funds according to actual needs; and

(ii) May—through a notice published in the FEDERAL REGISTER—establish closing dates and priorities for applications.

(b) The Secretary may—through notice in the FEDERAL REGISTER—give priority consideration to—

(1) Applications from developing institutions (as defined in § 617.1); or

(2) The degree of efficiency with which the applicant is using its present facilities; or

(3) Both.

(c) The Secretary does not approve a loan application for a reconstruction or renovation project authorized under Title VII E unless the application meets the conditions specified in paragraphs (a) and (c) of § 617.8.

(Authority: 20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.60 Loan agreement.

(a) The Secretary prepares and sends a loan offer to an applicant if—

(1) The application meets all requirements of the Act and the regulations governing administration of the Act; and

(2) The Secretary approves the project and reserves funds for it.

(b) The loan offer—

(1) Contains the terms and conditions for the loan; and

(2) Is conditioned on the fulfillment of these terms and conditions.

(c) The accepted loan offer constitutes the loan agreement between the Secretary and the applicant for the partial financing of the construction, reconstruction, or renovation of the approved project.

(Authority: 20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.61 Loan closing.

Loan closing occurs at the time determined by the Secretary.

(Authority: 20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.62 Interim financing.

(a) If necessary, an applicant shall arrange for interim financing, subject to the approval of the Secretary, to cover the cost of construction, reconstruction, or renovation pending the loan closing.

(b) If the Secretary finds that the applicant is unable to secure necessary interim financing on reasonable terms, the Secretary may provide for advances against the approved loan.

(Authority: 20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.63 Construction fund.

(a)(1) A borrower shall deposit in a separate bank account—

(i) The proceeds of the sale of the bonds or notes;

(ii) Any interim advances against the approved loans; and

(iii) All other money that the borrower will use in paying for the construction, reconstruction, or renovation of the approved project.

(2) The separate account shall be known as the construction fund.

(3) The borrower shall keep this account in a bank of its choice.

(4) The borrower shall make all expenditures for the construction, reconstruction, or renovation from this fund.

(5) Accounting for this fund shall be in accordance with generally accepted accounting principles.

(b)(1) If necessary and appropriate, the Secretary may approve other arrangements for—

(i) The deposit of construction funds; and

(ii) The accounting for those funds.

(2) Those other arrangements must provide adequate accountability for the total construction, reconstruction, or renovation receipts and expenditures.

(Authority: 20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.64 Investment of idle construction funds.

(a) If the money on deposit in the construction fund exceeds the estimated disbursements for the project for the next 90 days, the Secretary encourages the borrower—if permitted by State or local law—to invest those excess funds.

(b) If the borrower chooses to invest the funds referred to in paragraph (a) of this section, the borrower—unless otherwise prohibited by State or local law—shall invest those funds in—

(1) Direct obligations of the U.S. Government; or

(2) Obligations whose principal and interest are guaranteed by the U.S. Government.

(c) An investment made in accordance with paragraph (b) of this section shall be in obligations that will mature not later than 18 months from the date of the investment.

(Authority: 20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.65 Disposal of balance remaining in the construction fund.

Upon full settlement with all contractors, suppliers, and the other parties to whom it has incurred obligations under the project, the borrower shall dispose of any money remaining in the construction fund in accordance with the provisions of the loan agreement.

(Authority: 20 U.S.C. 1132c-2(b), 1132d-11(a))

§ 617.66 Moratorium on principal or interest payments on loans.

The Secretary may approve a moratorium on the repayment of principal and interest installments on a loan if the borrower—

(a) Can demonstrate a temporary inability to make those payments without undue financial hardship; and

(b) Furnishes, in a plan acceptable to the Secretary, a specific schedule for repayment of the amounts in arrears. However, the Secretary may permit the borrower to defer submission of the plan if the borrower—

(1) Clearly demonstrates that it cannot reasonably project a specific repayment schedule due to circumstances beyond its control; and

(2) Satisfactorily assures the Secretary that it will develop a schedule for consideration at a future date that the Secretary designates.

(Authority: 20 U.S.C. 1132c-2(b)(5)(A))

§ 617.67 Discounted prepayment of a loan.

(a)(1) The Secretary may provide a discount for prepayment in full of an Academic Facilities loan in an amount determined to be in the best financial interests of the Government for institutions that meet the conditions established in paragraph (b) of this section.

(2) The discount is applicable both to loans in current payment status and to loans in default as long as an institution does not become delinquent or in default on its loans after October 1, 1986. The Secretary reviews proposals from institutions with defaulted loans separately from those in current payment status in order to provide institutions in default all possible guidance in accomplishing the prepayment of their college housing loans.

(b) The Secretary may approve a proposal from an institution for discounted prepayment of an Academic Facilities loan if—

(1) The prepayment is made before October 1, 1991;

(2) The prepayment is made from non-Federal sources;

(3) The prepayment is made on a loan both issued before October 1, 1986 and outstanding for at least five years;

(4) The prepayment is not derived from proceeds of obligations, the income of which is exempt from taxation under the Internal Revenue Code of 1954;

(5) The prepayment is in an amount determined in accordance with paragraph (c) of this section; and

(6) The Secretary is assured that the education facility financed by the proceeds of the loan being prepaid will continue to be used for educational purposes for the duration of the loans' originally scheduled time to maturity.

(c) The Secretary determines the amount of a prepayment for an Academic Facilities loan based on—

(1) Current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to that of the loan to be prepaid;

(2) Current fair market value of outstanding marketable obligations that are of comparable quality to that of the loan to be prepaid;

(3) Current and anticipated administrative costs incurred by the Secretary in servicing the loan to be prepaid; or

(4) Current net proceeds that the Secretary would receive from nongovernmental investors, if the loan to be prepaid were purchased by such investors on the open market.

(Authority: 20 U.S.C. 1132d-1)

[51 FR 46563, Dec. 23, 1986]

Subpart E—Annual Interest Grants for Construction, Reconstruction, or Renovation of Academic Facilities Under Section 745 of Title VII C of the Act

§ 617.71 Purpose and eligibility.

(a) The Secretary may make annual interest grants to reduce the cost of borrowing funds, other than those available under this part, for the construction, reconstruction, or renovation of academic facilities.

(b) Those eligible to apply for annual interest grants are—

(1) Institutions of higher education; and

(2) Higher education building agencies.

(Authority: 20 U.S.C. 1132c-4)

(b-1)(1) The Secretary considers making an annual interest grant only if the applicant is unable to secure from other sources a loan—up to the amount the Secretary may subsidize under the law—with an interst rate equally as favorable as the rate applicable to direct Federal loans under Title VII C of the Act.

(2) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may establish, including public advertising for bids.

(Authority: 20 U.S.C. 1132c-4(e)(2))

(c) The Secretary does not make an annual interest grant for a loan if—

(1) A borrower is legally obligated under that loan before it has filed an application under this subpart; or

(2) The loan covers a construction, reconstruction, or renovation activity that the borrower began more than 12 months before the closing date for which it requests an interest grant.

(Authority: 20 U.S.C. 1132c-4)

§ 617.72 Amount of annual interest grants.

(a) Each interest grant that the Secretary makes is approximately equal to, but not more than, the difference between—

(1) The average annual debt service that the borrower is required to pay on the amount borrowed from private sources for the project covered by the application; and

(2) An average annual debt service on the same amount at an interest rate of three percent.

(b) The Secretary may amend the amount of the annual interest grant stipulated in the agreement to reflects changes in the amount or terms of the loan.

(c)(1) If the borrower increases its loan, it may request of the Secretary an increase in the amount of its annual interest grant.

(2) The borrower must make this request—

(i) Not later than 12 months after it has begun construction, reconstruction, or renovation; and

(ii) By submitting to the Secretary an amended application.

(3) The Secretary considers the request, subject to the ranking system applicable at the time the borrower submits the request.

(d)(1) If, at the time the borrower becomes legally obligated under a loan, there has been a change in the rate of interest or the terms of the loan, the borrower may request of the Secretary an increase in the amount of its annual interest grant.

(2) The Secretary considers the request apart from the ranking system.

(Authority: 20 U.S.C. 1132c-4(b))

§ 617.73 Submission of applications.

(a) An applicant for annual interest grants shall submit its application at the time, in the manner, and containing the information that the Secretary specifies.

(b) The applicant may not invite bids under the project before submitting its application to the Secretary.

(c)(1) The applicant shall send a copy of its application to the State commission before submitting it to the Secretary.

(2) The commission shall review and evaluate the application and provide comments to the Secretary regarding—

(i) Use of space;

(ii) Enrollment data; and

(iii) The overall need for the facility—or for the reconstruction or renovation of the facility—for which the applicant has requested assistance.

(3) Following its review, the commission shall furnish its evaluation to the applicant.

(4) If the applicant does not agree with the evaluation, the applicant may include with its application to the Secretary a statement supporting its position.

(d) The commission shall submit the application to the Secretary together with all State clearinghouse comments required by OMB Circular A-95.

(e) If the State commission is not the agency serving as the State postsecondary education commission authorized under Section 1202(a) of the Act, the State commission shall afford the latter the opportunity to review and evaluate an application filed under section 745 of the Act.

(Authority: 20 U.S.C. 1132c-4, 1142a)

§ 617.74 Conditions for approval of annual interest grants.

The Secretary approves an application for annual interest grants only if the Secretary is satisfied that—

(a) The facilities the applicant proposes to construct, reconstruct, or renovate are urgently needed—

(1) To accommodate more students; or

(2) To replace inadequate facilities in order to prevent a decrease in student enrollment capacity;

(b) The applicant will have available, as required, funds to pay the total development cost of the facilities;

(c) The applicant has or will have a full title or interest in the site, including right of access, that is sufficient to insure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(d) The applicant has the necessary legal authority to—

(1) Finance; construct, reconstruct, or renovate; and maintain the proposed facilities;

(2) Apply for and receive the proposed loan and annual interest grants; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan; and

(e) The applicant's financing plan meets the conditions of § 617.76 and is otherwise practicable and feasible.

(Authority: 20 U.S.C. 1132c-4)

§ 617.75 Limits of Federal assistance.

(a) The principal amount of a loan—or portion of a loan—on which the Secretary approves an annual interest grant, together with the amount of any other Federal financial assistance the applicant has obtained or is assured of obtaining under any other Federal program, may not exceed 90 percent of the eligible development cost.

(b) The aggregate principal amount of loans—or portions of loans—on which the Secretary approves annual interest grants does not exceed $5 million per campus for a Federal fiscal year.

(Authority: 20 U.S.C. 1132c-4)

§ 617.76 Approval of financing plans.

(a) Except as provided in paragraph (b) of this section, in order to be acceptable to the Secretary, a financing plan submitted under § 617.73 must—

(1) Provide that the term of the loan for which the applicant requests an annual interest grant does not exceed the lesser of—

(i) Thirty years; or

(ii) The useful life of the facilities that the applicant proposes to construct, reconstruct, or renovate with the help of the loan;

(2) Provide that the borrower is to repay the loan in substantially level annual installments of interest and principal over the term of the loan, except that the borrower may pay interest only for an initial period not exceeding five years; and

(3) Contain other provisions that will assure the Secretary that the support provided by the Secretary over the term of the loan is no more than is necessary to carry out the purposes of this subpart.

(b)(1) If the Secretary finds that unusual circumstances warrant an exception, the Secretary may accept a financing plan related to a loan for which—

(i) The term is longer than 30 years;

(ii) The annual installments of interest and principal are not substantially level; or

(iii) Both.

(2) However, the term of a loan otherwise eligible for assistance under this subpart may not exceed 40 years.

(Authority: 20 U.S.C. 1132c-4)

§ 617.77 Evidence of lowest possible cost of loan.

(a) An applicant shall demonstrate to the satisfaction of the Secretary that the loan it proposes to obtain is at the lowest possible net interest cost.

(b)(1) In the case of an applicant proposing to issue tax-exempt bonds to finance the construction, reconstruction, or renovation of academic facilities, the Secretary considers the applicant to meet the requirement in paragraph (a) of this section if the applicant proposes to sell those securities after publicly advertising for bids for the securities in an advertising medium acceptable to the Secretary.

(2) Before advertising these bonds for sale, the applicant shall submit for the Secretary's approval—

(i) A draft of the notice of sale; and

(ii) A statement of essential facts concerning the sale.

(c)(1) An applicant proposing to issue securities that are not tax-exempt shall submit to the Secretary offers from at least three lending institutions normally engaged in making long-term construction, reconstruction, or renovation loans.

(2) The applicant shall have given each of those institutions the information necessary to enable it to specify in its offer the—

(i) Amount of the loan;

(ii) Interest rate;

(iii) Maturity period;

(iv) Security provisions; and

(v) Prepayment provisions.

(d) The applicant—whether proposing to issue tax-exempt bonds or proposing to issue securities that are not tax-exempt—may not enter into a firm and binding agreement with a lender before the Secretary has approved the loan offer.

(Authority: 20 U.S.C. 1132c-4)

§ 617.78 Annual interest grant agreement.

(a)(1) After approving an application for annual interest grants, the Secretary prepares and sends to the applicant a proposed agreement containing the terms and conditions of those grants.

(2) The Secretary enters into this agreement for the benefit of the applicant institution only.

(b) The proposed agreement provides that if the applicant does not become legally obligated under the loan before the Secretary puts the agreement into effect, the Secretary does not make any grant under the agreement unless the Secretary concurs in the rate of interest and other terms and conditions of the loan.

(c)(1) The applicant may not enter into the agreement—

(i) For the benefit of third parties; or

(ii) To induce—

(A) The making of loans by third parties; or

(B) The sale of bonds to third parties.

(2) The Secretary does not entertain grievances or claims of third parties with respect to the agreement between the Secretary and applicant institution.

(Authority: 20 U.S.C. 1132c-4)

§ 617.79 Payment of annual interest grants.

(a) The Secretary makes payments under an annual interest grant agreement once a year.

(b) The date of payment coincides as closely as possible with—

(1) The anniversary date of the loan or;

(2) The date when debt service requirement related to the loan is greatest.

(c) The payment date remains fixed for the duration of the loan.

(d) The Secretary pays annual interest grants—

(1) Directly to the grantee; or

(2) To a trustee, paying agent, or lender to whom the grantee assigns the payments with the permission of the Secretary.

(Authority: 20 U.S.C. 1132c-4)

§ 617.80 Reduction of grant if refinancing produces lower costs.

If the Secretary finds that a grantee could have accelerated repayment of an outstanding loan or obtained a new loan that would have resulted in a net savings in the cost of the loan, the Secretary may recompute the amount of the annual interest grant as though the grantee had undertaken that refinancing.

(Authority: 20 U.S.C. 1132c-4)

§ 617.81 Application closing dates.

The Secretary may—through a notice published in the FEDERAL REGISTER—establish closing dates for applications for annual interest grants.

(Authority: 20 U.S.C. 1132c-4)

§ 617.82 Preceding provisions not exhaustive of authority of the Secretary.

The provisions of this subpart do not exhaust the authority of the Secretary to impose, at any time the Secretary considers appropriate, additional limitations with regard to—

(a) The amount of an annual interest grant; or

(b) The amount on which that grant is based.

(Authority: 20 U.S.C. 1132c-4)

PART 619—GRANTS FOR CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF GRADUATE ACADEMIC FACILITIES

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AUTHORITY: 20 U.S.C. 1132a-1132e-1, unless otherwise noted.

SOURCE: 51 FR 29438, Aug. 15, 1986, unless otherwise noted.

Subpart A—General

§ 619.1 What is the Graduate Academic Facilities Program?

The Graduate Academic Facilities Program provides grants to graduate institutions of higher education for the construction, reconstruction, and renovation of graduate academic facilities or, in some cases for the acquisition of special research equipment. The grants may be used for new or existing academic facilities if the primary purpose of the project is to carry out one or more of the kinds of projects described in § 619.10.

(Authority: 20 U.S.C. 1132c)

§ 619.2 Who is eligible to apply for a grant under the Graduate Academic Facilities Program?

Graduate institutions of higher education are eligible to apply for grants under this program.

(Authority: 20 U.S.C. 1132c)

§ 619.3 What regulations apply to the Graduate Academic Facilities Program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

(b) The regulations in this Part 619.

(Authority: 20 U.S.C. 1132)

§ 619.4 What definitions apply to the Graduate Academic Facilities Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in EDGAR, 34 CFR Part 77.1:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Public
Recipient
Supplies
Secretary
Work of art.

(b) *Revised EDGAR definitions.* The following terms defined in EDGAR, 34 CFR 77.1 are redefined for this part as follows:

Acquisition means taking ownership of property through purchase at fair market value.

Equipment means machinery, fixtures, and other items necessary for maintenance and operation of a facility, except books, computer software, instructional materials, and items involving current operating expenses such as fuel, supplies, and serviceable parts. Equipment may consist of—

(1) *Built-in equipment,* which includes permanent nonmovable fixtures to a facility;

(2) *Initial equipment,* which includes items necessary for installation in connection with construction of a facility;

(3) *Movable equipment,* which includes movable fixtures and furniture necessary and appropriate for the functioning of an academic facility taking into account the specific purposes of the facility; and

(4) *Special research equipment,* which includes equipment used in connection with a research program at graduate institutions of higher education.

Project means the construction activity or the acquisition of special research equipment that is proposed for funding by an applicant for assistance under this program.

(c) *Other definitions that apply to this part.* The following definitions also apply to this part:

Academic facilities means buildings or structures necessary and appropriate for instruction of students, for research, or for administration of educational programs and student and faculty services at an institution of higher education. Academic facilities include instructional and library facilities, instruction-related facilities, and related supporting facilities, but do not include facilities such as—

(1) Dormitories, residence halls, or similar facilities designed for residence or habitation;

(2) Infirmaries or similar facilities designed for outpatient care;

(3) Facilities intended for events for which admission is to be charged the general public;

(4) Gymnasiums, stadiums, swimming pools, student centers, or other

similar facilities designed for athletic or recreational activities;

(5) Facilities used for religious worship or sectarian activities, or used in connection with a program conducted by a school or department of divinity; or

(6) Facilities used by a school of medicine, school of dentistry, school of osteopathy, school of pharmacy, school of optometry, school of podiatry, school of nursing, or school of public health, unless the facilities—

(i) Are owned, operated, and maintained by a parent or affiliated institution of higher education which exercises corporate control over the particular school;

(ii) Require conversion or modernization of energy utilization techniques to economize on the use of energy resources; and

(iii) Support activities, services, or structures maintained by a parent or an affiliated institution of higher education.

Act means the Higher Education Act of 1965, as amended. Unless otherwise indicated, references to titles in the regulations in this part are to titles of the Act.

Assignable area means the square footage of floor space in facilities which is designed and available for assignment to specific functional purposes, such as instruction, research, and administration, but does not include—

(1) Areas used for general circulation within a building;

(2) Areas for public washrooms;

(3) Areas for building maintenance or custodial services; or

(4) Areas in central maintenance and utility facilities that exist only to support the operation and use of other structures on the campus and that are not available for assignment to specific functional purposes.

Branch campus means, within an institution of higher education, a unit that—

(1) Is separately organized;

(2) Is located apart from the parent institution;

(3) Meets the definition of an institution of higher education under the Act as an independent unit; and

(4) Has its own Federal Interagency Committee on Education (FICE) identification number.

Capacity/enrollment ratio means—

(1) The ratio of the assignable area of instructional and library facilities to the total student clock-hour enrollment at the campus of an institution, and

(2) For purposes of this definition, "student clock-hour enrollment" means the aggregate clock hours (sometimes called contact hours) per week in classes or supervised laboratory or shop work of those students enrolled in credit courses—i.e., attending credit courses at the institution's campus. A campus having formally established independent study programs may include systematically determined equivalents of credit hours but only include those hours when the relevant facility is being used by those students.

Construction means the erection of new structures, the rehabilitation, conversion, or improvement of existing structures, or the acquisition of existing structures and land thereunder.

Eligible development costs means the amount of necessary and reasonable expenses that would be incurred by construction of a project and that would be subject to reimbursement under this program, excluding any expenses reimbursed under any other Federal construction grant and any non-Federal funds required to be expended as a condition for the grant.

FTE student means full-time-equivalent student, as that term is defined for the Higher Education General Information Survey (HEGIS).

Graduate institution means an institution of higher education within the meaning of section 1201(a) of the Act that provides at least one post-baccalaureate program of study leading to an advanced degree.

Other facilities used by students means, in connection with projects relating to asbestos hazards, any campus facilities used by students even if those facilities are ineligible for Federal assistance under this program.

Research facilities, including libraries means academic facilities used in connection with research programs at graduate institutions of higher education.

Research program means an organized activity which has as its primary objective the creation, organization, and dissemination of new knowledge or technology. It embraces only those activities designed to produce research outcomes commissioned by an agency either external to the institution or authorized by an organizational unit within the institution. It does not include research funded from the instructional budget of the institution.

Unusual increases in enrollment means an increase in full-time-equivalent enrollment of at least 100 full-time-equivalent students and an increase of more than 10 percent of FTE enrollment over a period of three years going back to the fall term beginning three years prior to the filing date for applications.

(Authority: 20 U.S.C. 1132a, 1132d-1, 1132e. 1132e-1)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 619.10 What kinds of projects are funded under the program?

(a) Funds are awarded for projects which enable graduate institutions of higher education to—

(1) Economize on the use of energy resources;

(2) Comply with the requirements of—

(i) The Architectural Barriers Act of 1968;

(ii) Section 504 of the Rehabilitation Act of 1973; or

(iii) Other Federal, State or local laws dealing with environmental protection or health and safety, if the laws impact on facilities after they were constructed;

(3) Detect, remove, or contain asbestos hazards;

(4) Accommodate unusual increases in enrollment; or

(5) Improve research facilities, including library facilities, and acquire special research equipment.

(b) In order for facilities to be eligible for assistance under paragraphs (a)(2)(iii) and (a)(3) of this section, the applicant must submit with its application satisfactory evidence to demonstrate that the degree of non-compliance with legal requirements, and the degree of threat from, and exposure to, asbestos hazards, pose a significant threat to the health and safety of the students.

(Authority: 20 U.S.C. 1132c)

§ 619.11 What are the funding priorities?

The Secretary may announce from among those categories listed in 34 CFR 619.10 funding priorities under this program in any given fiscal year through a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1132a-1132-1)

Subpart C—How Does One Apply for a Grant?

§ 619.20 What limitations apply to the number of applications that may be submitted?

An applicant may submit only one application for assistance under this program in any given fiscal year. The Secretary considers as a separate applicant a branch campus of a mulit-campus institution. If a project is funded by this program, the Secretary will not accept any future applications for funding for the same project.

(Authority: 20 U.S.C. 1132c)

Subpart D—How Does the Secretary Make a Grant?

§ 619.30 How are applications evaluated?

(a) The Secretary evaluates an application for a grant on the basis of—

(1) The general criteria in § 619.31 for all applicants; and

(2) The specific criteria in §§ 619.32 through 619.36 for applicants of particular categories of projects.

(b)(1) The Secretary awards up to a total of 100 points based on a maximum possible score of—

(i) 40 points for the general criteria in § 619.31; and

(ii) 60 points for the specific criteria in §§ 619.32 through 619.36, as applicable.

(2) The maximum possible score for each criteria is indicated in parentheses following the heading of that criterion.

(c) If a project includes two or more of the categories in § 619.10, the Secretary applies—

(1) The general criteria in § 619.31 (up to 40 points); and

(2) Each applicable set of specific criteria in §§ 619.32 through 619.36. The Secretary awards the average score (up to 60 points) received by the project under those sets of specific criteria.

(d) The Secretary may award up to 25 additional points to each application that meets one or more priority categories established under § 619.11. Subject to the 25-point limit, the Secretary may award a higher number of points to an application that addresses more than one priority category, and may award a lower number of points to an application that addresses both a priority and a nonpriority category. The Secretary announces the number of additional points for each priority category and type of application in a notice published in the FEDERAL REGISTER.

(e) The Secretary ranks all eligible applications in accordance with the total number of points each application receives in accordance with this section. Before making grants, the Secretary obtains the advice and recommendations of a panel of specialists who are competent in evaluating program applications. The Secretary may, based on the advice and recommendations of the panel, deviate from the initial rank order. Regular, full-time employees of the Federal Government may not be appointed as panel members.

(Authority: 20 U.S.C. 1132c)

§ 619.31 What selection criteria are used to evaluate existing academic facilities and financial need?

The Secretary evaluates each application for a grant under this program on the basis of the following criteria:

(a) *Use of existing academic facilities.* (Total: 10 points)

(1) The Secretary assesses the extent to which the applicant makes use of its existing academic facilities by considering the amount of assignable square feet in those facilities per FTE student.

(2) The Secretary assigns the highest scores to applicants with the smallest amount of square feet per FTE student.

(b) *Capacity/enrollment ratio.* (Total: 10 points)

(1) The Secretary further assesses the applicant's use of its existing academic facilities as reflected by the institution's capacity/enrollment ratio.

(2) The Secretary assigns the highest scores to applicants with the lowest capacity/enrollment ratio.

(c) *Financial Need.* (Total: 20 points)

(1) The Secretary considers the basic education and general annual expenditures per FTE student, based on data reported in the annual National Center for Education Statistics Survey, "Financial Statistics of Institutions of Higher Education," for the most recent year for which data are available.

(2) The Secretary assigns the highest scores to applicants with the lowest expenditure per FTE student.

(Approved by the Office of Management and Budget under control number 1840-0580)

(Authority: 20 U.S.C. 1132c)

§ 619.32 What selection criteria are used to evaluate energy conservation projects?

For projects based on energy conservation, the Secretary applies the following criteria:

(a) *Life cycle energy analysis.* (Total: 6 points)

(1) The Secretary considers whether the proposed project is based on a least-cost life cycle energy analysis that reflects the life cycle cost of the project over a twenty-year period.

(2) The Secretary awards six points for the criterion.

(b) *Integrated system design.* (Total: 6 points)

(1) The Secretary considers whether the proposed project exhibits an integrated system design, including a mix of energy sources and/or cogeneration systems, and/or other integrated system designs.

(2) The Secretary awards six points for this criterion.

(c) *Use of coal, solar energy, and renewable resources.* (Total: 8 points)

(1) The Secretary considers whether the proposed project promotes the use of coal, solar energy, or renewable resources.

(2) The Secretary awards eight points for this criterion.

(d) *Energy savings internal rate of return to the project.* (Total: 20 points)

(1) The Secretary considers the extent to which the proposed project is likely to provide a significant return in energy cost savings on the investment represented by the cost of the project.

(2) The internal rate of return is calculated on the basis of projected energy cost savings and the total cost of the project, except for interior finishing and furnishing expenses (i.e. seating, blackboards, laboratory fixtures, etc.).

(3) Projected energy cost savings for renovation projects of existing buildings are the difference between—

(i) The average routine energy costs over the last three years, adjusted to current prices; and

(ii) Projected annual energy cost resulting from completion of the project.

(4) Projected energy cost savings for new construction are the difference between—

(i) The projected annual energy costs of a conventionally-designed building of the same kind as the one proposed (as calculated by an architectural engineering firm or consulting services firm); and

(ii) Projected annual energy costs resulting from the completion of a least-cost energy design project.

(5) The Secretary assigns the highest scores to applicants demonstrating the highest projected internal rates of return in energy cost savings.

(e) *Energy savings internal rate of return to the Federal investment share.* (Total: 20 points)

(1) The Secretary considers the extent to which the Federal investment in the proposed project is likely to provide a significant return in energy savings.

(2) The internal rate of return is calculated on the basis of the projected energy cost savings as determined under paragraph (d) of this section and the total Federal investment in the project.

(3) The Secretary assigns the highest scores to applicants demonstrating the highest projected internal rates of return in energy cost savings.

(Approved by the Office of Management and Budget under control number 1840-0580)

(Authority: 20 U.S.C. 1132c)

§ 619.33 What selection criteria are used to evaluate the removal of architectural barriers, and environmental protection or health and safety standards mandated by law?

(a) For projects to remove architectural barriers to meet accessibility requirements which were not in effect at the time the facilities were constructed, the Secretary applies the following criteria:

(1) *Amount of assignable square feet of academic facilities to be made accessible by the project.* (Total: 30 points)

(i) The Secretary considers the amount of assignable square feet of academic facilities per FTE student to be made accessible to the handicapped by the project.

(ii) The Secretary assigns the highest scores to applicants with the largest amount of square feet to be made accessible per FTE student.

(2) *Percentage of assignable square feet of academic facilities to be made accessible by the project.* (Total: 30 points)

(i) The Secretary considers the percentage of assignable square feet of academic facilities to be made accessible to the handicapped by the project.

(ii) The Secretary assigns the highest scores to applicants with the largest percentage of square feet to be made accessible by the project.

(b) For reconstruction or renovation projects to meet environmental protection or health and safety standards mandated by Federal, State, or local law, if those requirements were not in effect at the time the facilities were constructed, the Secretary applies the following criteria:

(1) *Cost per FTE student.* (Total: 30 points)

(i) The Secretary considers the cost per FTE student of the applicant's compliance with the law.

(ii) The Secretary assigns the highest scores to applicants with the highest cost per FTE student.

(2) *Impact of the project.* (Total: 20 points)

(i) The Secretary considers the number of FTE students affected by the project.

(ii) The Secretary assigns the highest scores to applicants with the largest number of FTE students affected by the project.

(3) *Relative impact of the project.* (Total: 10 points)

(i) The Secretary considers both the number of FTE students affected by the project and the FTE enrollment of the institution.

(ii) The Secretary measures the relative impact of the project by dividing the number of FTE students affected by the project by the total number of FTE students enrolled, and assigns the highest scores to applicants with the highest relative impact.

(Approved by the Office of Management and Budget under control number 1840-0580)

(Authority: 20 U.S.C. 1132c(b); 1132a(2) (A) and (B))

§ 619.34 What selection criteria are used to evaluate the detection, removal, or containment of asbestos hazards?

For projects to detect, remove, or contain asbestos hazards, the Secretary applies the following criteria:

(a) *Amount of gross square feet of academic or other facilities with known or suspected asbestos hazards used by students.* (Total: 30 points)

(1) The Secretary considers the amount of gross square feet of academic or other facilities with known or suspected asbestos hazards per FTE student.

(2) The Secretary assigns the highest scores to applicants with the largest amount of square feet with known or suspected asbestos hazards per FTE student.

(b) *Estimated cost of detecting, removing, or containing asbestos hazards.* (Total: 30 points)

(1) The Secretary considers the estimated cost per FTE student of one or more of the following: detecting, removing, or containing asbestos hazards.

(2) The Secretary assigns the highest scores to applicants with the highest cost per FTE student.

(Approved by the Office of Management and Budget under control number 1840-0580)

(Authority: 20 U.S.C. 1132c(b); 1132(a)(5))

§ 619.35 What selection criteria are used to evaluate unusual increases in enrollment?

For projects based on unusual increases in enrollment, the Secretary applies the following criteria:

(a) *Increase in enrollment.* (Total: 30 points)

(1) The Secretary considers the extent of the actual numerical and percentage increases in FTE student enrollment at the institution or branch campus where construction would occur.

(2) The Secretary considers the increases over a three-year period starting with the fall semester that began three years preceding the most recent fall semester.

(3) The Secretary awards up to 15 points for the actual numerical increase and up to 15 points for the percentage increase, and assigns the highest scores to applicants with the largest increases in FTE student enrollment.

(b) *Increase in capacity.* (Total: 30 points)

(1) The Secretary considers the amount and percentage by which the project increases the assignable square feet of academic facilities at an institution.

(2) The Secretary awards up to 15 points for the actual numerical increase and up to 15 points for the percentage increase, and assigns the highest scores to applicants with the largest increases of assignable square feet of academic facilities per FTE student.

(Approved by the Office of Management and Budget under control number 1840-0580)

(Authority: 20 U.S.C. 1132c)

§ 619.36 What selection criteria are used to evaluate research facilities, including libraries, and the acquisition of special research equipment?

For projects based on research facilities, including libraries, and the acquisition of special research equipment, the Secretary applies the following criteria:

(a) *Institutional commitment to research programs.* (Total: 10 points)

(1) The Secretary considers the applicant's expenditures for research programs as a percentage of the applicant's average annual educational and general expenditures for graduate programs, as reported in the annual National Center for Education Statistics Survey, "Financial Statistics of Institutions of Higher Education," for the three most recent years for which data are available.

(2) The Secretary assigns the highest scores to applicants with the largest percentage of expenditures for research programs.

(b) *Age of special research equipment.* (Total: 10 points)

(1) The Secretary considers the percentage of the applicant's special research equipment which is more than five years old as of the opening of the fall semester preceding the application closing date.

(2) The Secretary assigns the highest scores to applicants with the largest percentage of special research equipment which is more than five years old.

(c) *Quality of existing research programs.* (Total: 10 points)

(1) The Secretary considers the quality of the applicant's existing research programs, in particular the adequacy of the existing research facilities and special research equipment, and the relevance of the proposed project to current research programs.

(2) A panel of specialists evaluates the quality of existing programs.

(d) *Increase in research capacity.* (Total: 10 points)

(1) The Secretary considers the extent to which the proposed project will increase the applicant's capacity for research or improve its existing research capacity.

(2) A panel of specialists evaluates the increase in research capacity.

(e) *Funding priorities.* (Total: 10 points)

(1) The Secretary considers the extent to which the proposed project improves the applicant's capacity for research in those academic disciplines, such as physical sciences and mathematics, engineering and environmental sciences, biological sciences, social sciences and education, and arts and humanities, which the Secretary, through a notice published in the FEDERAL REGISTER, establishes as priorities for the program in any given fiscal year.

(2) A panel of specialists evaluates the extent to which the project meets the Secretary's funding priorities.

(f) *Impact of project.* (Total: 5 points)

(1) The Secretary considers the extent to which the proposed project is likely to increase the capacity of the applicant to supply highly qualified personnel critically needed by the community, industry, and government for research and teaching.

(2) A panel of specialists evaluates the potential impact of the project.

(g) *Scope of project.* (Total: 5 points)

(1) The Secretary considers the extent to which the proposed project is likely to contribute significantly to the distribution of research programs of high quality throughout the United States.

(2) A panel of specialists evaluates the scope of the project.

(Approved by the Office of Management and Budget under control number 1840-0580)

(Authority: 20 U.S.C. 1132(b), 1132c, 1132a(3))

Subpart E—How Does the Secretary Determine the Amount of the Grant Award?

§ 619.40 What are the general rules for determining eligible development costs?

The Secretary determines eligible development costs by assessing the reasonableness and appropriateness of expenses that would be incurred by the project taking into account—

(a) The timing of when certain expenses would be incurred by the applicant; and

(b) The applicant's compliance with the regulations in this part.

(Authority: 20 U.S.C. 1132a, 1132c, 1132e-1)

§ 619.41 What are the specific rules for determining eligible development costs?

(a) An applicant selected to receive a grant under this program shall obtain from the Secretary a determination of eligible development costs before it may award any contract for construction or purchase any equipment that may later be financed with assistance under this program.

(b) The Secretary approves costs only after the Secretary or the appropriate official of another Federal agency has approved Federal assistance for the construction.

(c) The Secretary excludes the following from eligible development costs:

(1) Any costs for land incurred before the applicant files the application.

(2) Any cost for the acquisition of a structure incurred before the applicant files the application.

(3) Any costs for equipment, including special research equipment, incurred before the date the applicant files the application.

(4) Any cost for construction or built-in equipment if the contract was entered into before the date the applicant files the application, or before the date the Secretary concurs in the award of the construction or built-in equipment contract.

(5) Any cost for ineligible facilities included in the total development costs.

(Authority: 20 U.S.C. 1132-1(3))

Subpart F—What Conditions Apply to Awards under this Program?

§ 619.50 What are the funding levels?

(a) An award of a construction grant under this program may not exceed 50 percent of the total eligible development costs.

(b) The Secretary does not award a construction grant for less than $25,000.

(c) The Secretary awards to institutions of higher education in any one State not more than 12.5 percent of the total funds available for grants under this program in any fiscal year.

(Authority: 20 U.S.C. 1132c)

§ 619.51 What are the financial considerations for approval or selection?

(a) The Secretary does not approve or select applications from institutions that are in default on a construction loan previously made under Part C of Title VII of the Act or Title IV of the Housing Act of 1950, whether or not the Secretary has agreed to any deferment, or in default of any other obligation made under any other Federal program.

(b) The Secretary does not approve or select applications from institutions that are financially insolvent.

(Authority: 20 U.S.C. 1132c)

§ 619.52 Must the grant award instrument be recorded?

A grantee under this program shall record its grant award instrument in the appropriate land registry records.

(Authority: 20 U.S.C. 1132c)

§ 619.53 What are the conditions for the recovery of payments?

The recipient or its successor shall pay to the Secretary an amount which bears to the value of the facility at that time the same ratio as the amount of the grant bore to the original cost of the facility, if, within twenty years after completion of construction of an academic facility under this program, a grant recipient or its successor in title or possession ceases to be a public or nonprofit institution, or the facility ceases to be used as an eligible academic facility, unless the Secretary determines that there is good cause for releasing the recipient or its successor from its obligation.

(Authority: 20 U.S.C. 1132e)

PART 624—INSTITUTIONAL AID PROGRAMS—GENERAL PROVISIONS

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AUTHORITY: 20 U.S.C. 1051–1069c, unless otherwise noted.

SOURCE: 47 FR 541, Jan. 5, 1982, unless otherwise noted.

Subpart A—General

§ 624.1 Institutional Aid Programs.

(a) The Institutional Aid Programs are designed to provide Federal funds for a limited period of time to assist eligible institutions of higher education to become self-sufficient by—

(1) Solving problems that threaten their ability to survive; and

(2) Stabilizing their management and fiscal operations.

(b) The Institutional Aid Programs consist of the following:

(1) The Strengthening Institutions Program (34 CFR Part 625), referred to in these regulations as the Strengthening Program.

(2) The Aid to Institutions with Special Needs Program (34 CFR Part 626), referred to in these regulations as the Special Needs Program.

(3) The Challenge Grant Program (34 CFR Part 627).

(4) The Endowment Grant Program (34 CFR Part 628).

(Authority: 20 U.S.C. 1051, 1057, 1060, and 1066)

[47 FR 541, Jan. 5, 1982, as amended at 49 FR 28521, July 21, 1984]

§ 624.2 Eligible applicants.

(a) In order to apply for a grant under the Institutional Aid Programs, an institution of higher education or a branch campus must first be designated by the Secretary as an eligible institution.

(b) Before applying to the Secretary for designation as an eligible institution under § 624.20, the institution must satisfy basic eligibility requirements; that is, it must be an educational institution and—

(1) Admit as regular students persons who are—

(i) High school graduates;

(ii) The recognized equivalent of high school graduates; or

(iii) Beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered by the institution;

(2) Be, and have been for five academic years preceding the academic year for which it seeks assistance, le-

gally authorized in the State in which it is located to—

(i) Provide an educational program for which it awards a bachelor's degree; or

(ii) Be a junior or community college;

(3) Be, and have been for five academic years preceding the academic year for which it seeks assistance—

(i) Accredited by a nationally recognized accrediting agency or association; or

(ii) Making reasonable progress toward accreditation according to that accrediting agency or association; and

(4) Meet specific eligibility requirements for designation in 34 CFR 625.2, 626.2, or 627.2, as appropriate.

(c) If an institution changes its status from a junior or community college to an institution that awards bachelors' degrees or *vice versa*, it may satisfy the five-year requirements of paragraphs (b) (2) and (3) of this section by combining the periods of time it qualified as either type of institution.

(Authority: 20 U.S.C. 1058, 1061, 1064, and 1141)

§ 624.3 Waiver of five-year requirement.

(a) At the request of an institution, the Secretary may waive for that institution all or part of the five-year requirements in paragraphs (b) (2) and (3) of § 624.2 if the Secretary determines that—

(1) The institution is located on an Indian reservation, or near an Indian reservation or a substantial population of Indians, and the waiver will substantially increase the higher educational opportunities appropriate to the needs of American Indians;

(2) The waiver will substantially increase higher educational opportunities for—

(i) Spanish-speaking people;

(ii) Individuals living in rural areas, whose needs are for the most part unserved by other institutions of higher education; or

(iii) Individuals whose income is below the poverty level established by the United States Bureau of the Census (low-income individuals); or

(3) The institution has traditionally served substantial numbers of black students.

(b)(1) For purposes of paragraph (a)(1) of this section generally the Secretary considers "near" to mean within 50 miles. However, the Secretary reserves the right to consider each distance between an institution and an Indian reservation on a case-by-case basis, according to reasons stated by the applicant in its request for a waiver; and

(2) For the purposes of paragraph (a)(2)(ii) of this section "rural area" means an area that is not included in a standard metropolitan statistical area as defined by the United States Bureau of the Census.

(c) An institution requesting a waiver under this section shall submit to the Secretary a written statement that includes sufficient information and explanations as to why the Secretary should grant the waiver.

(Authority: 20 U.S.C. 1067)

§ 624.4 Eligible grantees.

The Secretary awards a grant under the Institutional Aid Programs to—

(a) An institution the Secretary has designated as eligible; or

(b) Under the Strengthening Program or the Special Needs Program, two or more eligible institutions under a cooperative arrangement.

(Authority: 20 U.S.C. 1057, 1060, 1064 and 1069)

§ 624.5 Regulations that apply to the Institutional Aid Programs.

The following regulations apply to the Institutional Aid Programs:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions), and 34 CFR part 79 (Intergovernmental Review of Education Programs and Activities), except for—

(1) 34 CFR 75.128(a)(2) and 75.129(a), in the case of applications under cooperative arrangements; and

(2) 34 CFR 75.261(e), in the case of a continuation grant awarded from Fiscal Year 1986 or 1987 funds for a

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non-renewable development grant previously awarded if—

(i) The conditions specified in 34 CFR 75.261 (a) through (d) and (f) are met;

(ii) The resulting cumulative obligation of Federal funds under the grant does not exceed the total amount requested by the grantee in the original application;

(iii) The extended grant period does not exceed either the statutory limit or the duration originally requested by the grantee; and

(iv) The original grant amount resulted from an initial judgment by the Department of Education concerning the grant amount needed for the project which subsequently proved to be incorrect.

(b) The regulations in this Part 624.

(c) The regulations in 34 CFR Part 625, 626, 627, or 628, as applicable.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1057, 1060, 1064)

[47 FR 541, Jan. 5, 1982, as amended at 49 FR 28521, July 12, 1984; 51 FR 29196, Aug. 14, 1986; 55 FR 21715, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21715, May 25, 1990, § 624.5(a) was amended by removing the word "and", and adding a comma in its place; and by adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)", after "Definitions)", effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 624.6 Definitions that apply to the Institutional Aid Programs.

(a) The following terms used in this part are defined in EDGAR, 34 CFR Part 77:

Applicant
Application
EDGAR
Grant
Grant period
Grantee
Nonprofit
Private
Project
Public
Secretary
State

(b) The following definitions apply specifically to the Institutional Aid Programs:

Academic year means a period of time, generally eight or nine months, in which a full-time student is expected to complete—

(1) The equivalent of at least two semesters, two trimesters, or three quarters at an institution using credit hours; or

(2) At least 900 hours training for each program at an institution using clock hours.

Activity means a specific component of a project for which Federal funds are requested.

Base year means a 12-month period identified by the Secretary through a notice in the FEDERAL REGISTER.

Branch campus.

(1) This term means, in a university or college, a unit that is—

(i) Independent of the main campus; and

(ii) Geographically apart from the main campus of the university or college.

(2) The Secretary considers a branch campus to be independent of the university's or college's main campus if the branch campus—

(i) Is separately accredited;

(ii) Is permanent in nature;

(iii) Offers courses for credit and programs leading to an associate or bachelor's degree;

(iv) Is autonomous to the extent that it has its own faculty and administrative or supervisory organization; and

(v) Has its own budgetary and hiring authority.

Comparable institutions and *institutions that offer similar instruction* mean institutions that are being compared with an applicant institution and that fall within one of the following four categories:

(1) Four-year public institutions.

(2) Four-year non-profit private institutions.

(3) Public junior or community colleges.

(4) Nonprofit private junior or community colleges.

Cooperative arrangement means an agreement between two or more eligible institutions that share and combine resources and otherwise cooperate in order to carry out the purpose of the Institutional Aid Programs more effectively and efficiently than if each institution were to conduct those activities separately.

Educational and general (E&G) expenditures means the total amount expended by an institution of higher education for—

(1) Instruction;

(2) Research;

(3) Public service;

(4) Academic support including library expenditures;

(5) Student services;

(6) Institutional support;

(7) Scholarships and fellowships;

(8) Operation expenditures, and maintenance expenditures for physical plant; and

(9) Any mandatory transfers that the institution is required to pay by law.

"Full-time-equivalent (FTE)."

(1) This term means the sum of—

(i) The number of full-time students; and

(ii) The full-time equivalent of the number of part-time students enrolled at the institution.

(2) The Secretary determines the full-time equivalent of the number of part-time students in paragraph (1)(ii) of this definition by any method that yields the equivalent of—

(i) Adding the number of credit hours taken by all part-time students; and

(ii) Dividing that number by 12.

General operating and maintenance expenses means those costs that are generally recurrent or continuing in nature, such as costs of operating remedial programs, costs of classroom teaching, and costs of maintaining programs after the development period.

Junior or community college means an institution of higher education that provides an educational program—

(1) For which it does not award a bachelor's degree; but

(2)(i) That is of not less than two years' duration and is acceptable for full credit toward a bachelor's degree; or

(ii) That is a two-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

Non-renewable grant means a one-time-only, broad-purpose development grant designed to enable an institution or group of institutions to achieve self-sufficiency by the end of the grant period.

Pell Grant (formerly Basic Educational Opportunity Grant) means the grant awarded under Title IV-A-1 of the Higher Education Act of 1965, as amended (20 U.S.C. 1070a).

Renewable grant means a narrow-purpose development grant, for which an institution or group of institutions may reapply, designed to help an institution or group of institutions move toward self-sufficiency.

Self-sufficient means the point at which, in the determination of the Secretary, an institution should be viable, thriving, and able to survive without continued funding Under the Institutional Aid Programs.

Strengthening Developing Institutions Program (SDIP) means the program authorized under Title III of the Higher Education Act of 1965 before October 1, 1981.

(Authority: 20 U.S.C. 1058, 1059, 1061, 1062, 1066, and 1069)

Subpart B—What Kinds of Projects Does the Secretary Assist Under the Institutional Aid Programs?

§ 624.10 Types of grants.

The Secretary awards three principal types of grants under the Institutional Aid Programs:

(a) Planning grants, as described in § 624.11.

(b) Development grants, as described in § 624.12.

(c) Endowment grants, as described in § 628.10.

(Authority: 20 U.S.C. 1057, 1059, 1060, 1062, 1064 and 1065a)

[49 FR 28521, July 12, 1984]

§ 624.11 Planning grant.

(a) Unless otherwise provided, a planning grant may be used for a project to develop—

(1) A long-range comprehensive development plan (long-range plan), as described in § 624.22;

(2) An application for a development grant; or

(3) A long-range plan and an application for a development grant.

(b) The Secretary does not consider awarding a planning grant to an institution that is receiving or has received another grant—whether a planning or a development grant—under the Institutional Aid Programs.

(c) The Secretary does not consider awarding a planning grant to develop a long-range plan to a cooperative arrangement unless the purpose of the grant is to develop a separate long-range plan for each of the participating institutions.

(Authority: 20 U.S.C. 1057, 1059, 1060, 1062, and 1069)

§ 624.12 Development grant.

A development grant may be used for a project to implement portions of an applicant's long-range plan to enable it to move toward or achieve self-sufficiency.

(Authority: 20 U.S.C. 1057, 1060, and 1066)

§ 624.13 Allowable activities.

(a) The Secretary awards grants under the Institutional Aid Programs to assist eligible institutions to plan, develop, or implement activities that the Secretary determines are likely to enable the institution to become self-sufficient.

(b) The following types of development activities are allowable:

(1) Development of faculty.

(2) Management of funds and administrative management.

(3) Development and improvement of academic programs.

(4) Acquisition of equipment for use in strengthening management of funds and in strengthening academic programs.

(5) Joint use of facilities such as libraries and laboratories.

(6) Student services.

(c) The Secretary does not fund an activity for which a grantee is receiving or has received a grant under—

(1) Any Institutional Aid Program; or

(2) The SDIP, if that grant is scheduled to expire after September 30, 1982.

(Authority: 20 U.S.C. 1057, 1059, 1060, 1062, 1066 and 1221e-3)

Subpart C—How Does One Apply for a Grant?

§ 624.20 Designation as an eligible applicant.

(a)(1) An institution that wishes to be designated as an eligible institution for a particular Institutional Aid Program must file with the Secretary a request for designation for that program, according to the instructions contained in a notice published in the FEDERAL REGISTER.

(2) The Secretary annually publishes a notice in the FEDERAL REGISTER—

(i) Requesting applications for eligibility; and

(ii) Indicating the base year for calculating whether an institution satisfies the eligibility criteria under 34 CFR 625.2 and 626.2. The Secretary uses the most recent base year for which reliable data are available. If necessary, the Secretary may establish a separate base year for each of the three criteria described in 34 CFR 625.2 or 626.2 depending on data availability.

(b) An institution that receives a grant for a grant period lasting more than one year shall include in its annual application for a continuation award the assurance described in § 624.40(b).

(Authority: 20 U.S.C. 1058, 1061, and 1064)

§ 624.21 How to apply for a grant.

(a) *General.* In an application for either a planning grant or a development grant, an applicant shall—

(1) Explain how the grant will assist the institution to prepare for the critical financial and other problems facing it in this decade;

(2) If it is requesting funding for more than one activity—

(i) Identify those activities that would be a sound investment of Federal funds if funded separately;

(ii) Identify those activities that would be a sound investment of Federal funds only if funded along with other activities in the application; and

(iii) Rank the activities in order of preferred funding;

(3) If it is applying for a grant from more than one program under the Institutional Aid Programs, rank the applications in order of preferred funding;

(4) Submit all budgetary information the Secretary may require, including a separate detailed budget for each activity;

(5) Identify the policies and procedures it will use to ensure that any Federal funds it receives as a result of the application will be used to supplement—and not supplant—funds that would otherwise be available to carry out its long-range plan;

(6) Identify the fiscal control and accounting procedures necessary for proper disbursement of and accounting for any Federal funds it receives as a result of the application; and

(7) Provide assurance to the Secretary that it will comply with the restrictions on the use of funds specified in § 624.42 (a) through (g).

(b) *Development grant.* In an application for a development grant, an applicant shall—

(1) Include its long-range plan containing all the elements required in § 624.22;

(2) Provide information that fully addresses each component of each selection criterion in § 624.33;

(3) Identify the institutional goals in its long-range plan that each proposed development activity will help achieve; and

(4) If it is requesting a multi-year grant, explain why—

(i) A multi-year grant of that length is necessary; and

(ii) A single year grant would be inadequate.

(c) *Planning grant.* In an application for a planning grant, an applicant shall provide information that fully addresses each component of each selection criterion in § 624.31.

(Approved by the Office of Management and Budget under control number 1840-0593)

(Authority: 20 U.S.C. 1066, 1069b, and 1221e-3)

[47 FR 541, Jan. 5, 1982, as amended at 53 FR 49146, Dec. 6, 1988]

§ 624.22 Long-range plan.

(a) In its comprehensive long-range development plan (referred to in these regulations as the long-range plan), an institution shall describe its strategy for achieving self-sufficiency by strengthening its—

(1) Academic quality; and

(2) Institutional management.

(b) The long-range plan must include—

(1) The institutional mission statement (that is, a broad statement of fundamental purpose that includes the social and intellectual aspirations of the institution);

(2) Long-range and short-range institutional goals;

(3) Measurable objectives for each major unit of the institution;

(4) Time frames to achieve institutional goals and unit objectives;

(5) Major resource requirements; and

(6) Strategies for evaluating the institution's success in achieving all aspects of its long-range plan.

(Authority: 20 U.S.C. 1066)

§ 624.23 Applications for grants under cooperative arrangements.

(a) *General.* To apply for a grant under the Strengthening Program or the Special Needs Program, the participating institutions in a cooperative arrangement shall submit a single, collective application that includes—

(1) The information required in 34 CFR 624.21; and

(2) The names of the institutions participating in the cooperative arrangement.

(b) *Development grant.* The application for a development grant under a cooperative arrangement shall—

(1) Explain the relationship of the
ctivities for which funding is request-
d to—
(i) The long-range plan of each par-
cipating institution; and
(ii) The activities each participating
stitution carried out or is carrying
ut under a renewable development
rant, if any, awarded previously
nder the Strengthening Program;
(2) Explain the rationale for each
articipating institution's decision to
quest funds to carry out activities to
hieve self-sufficiency as part of a co-
perative arrangement rather than in-
vidually; and
(3) Identify the activities included in
ıy other application the cooperative
rangement or any participating in-
itution is submitting for funding in
e same fiscal year under the Institu-
nal Aid Programs.
(c) *Planning grant.* The application
r a planning grant under a coopera-
e arrangement shall explain the ra-
nale for each participating institu-
n's decision to request funds to de-
lop, as appropriate, its application
its long-range plan as part of a co-
erative arrangement rather than in-
idually.

uthority: 20 U.S.C. 1069)

24.24 Separate applications.

f an institution wishes to apply in
e same year for both a grant as an
lividual institution and a grant
der a cooperative arrangement, the
titution shall submit as an individ-
l institution an application that is
arate from the application the co-
erative arrangement submits.

thority: 20 U.S.C. 1066 and 1221e-3)

bpart D—How Does the Secretary Make a Grant?

4.30 General evaluation of applications.

a) The Secretary evaluates an appli-
ion for a planning grant on the
is of the criteria in § 624.31.
o) The Secretary evaluates an appli-
ion for a development grant on the
is of—
l) The appropriate criterion in
4.32 for assessing the long-range
n to achieve self-sufficiency; and

(2) The selection criteria in § 624.33.

(c)(1) The Secretary awards up to 100 points for the criteria in § 624.31 and up to 100 points for the criteria in § 624.33.

(2) The maximum possible score for each complete criterion is indicated in parentheses following the title of that criterion.

(3) In the case of criteria worth more than 10 possible points, the maximum possible score for each component of a criterion is indicated in parentheses following that component.

(d) The Secretary will not fund an application for a grant that receives less than 50 points for the criteria in § 624.31 or in § 624.33.

(Authority: 20 U.S.C. 1221e-3)

§ 624.31 Selection criteria for planning grants.

The Secretary evaluates an application for a planning grant on the basis of the following criteria:

(a) *Plan of operation.* (Total: 50 points)

(1) The Secretary reviews each application for information that shows that the proposed project is likely to develop a high quality—

(i) Long-range plan providing for self-sufficiency;

(ii) Application; or

(iii) Long-range plan and application.

(2) The Secretary looks for information that shows—

(i) Measurable objectives appropriate to the purpose of the project (10 points); and

(ii) The quality of the project plan to achieve the objectives. The Secretary bases this assessment of quality on—

(A) The quality of the proposed strategy for developing the applicant's long-range plan or application (15 points);

(B) A realistic timetable for achieving each objective (5 points);

(C) The extent to which the applicant will use its own resources and personnel to achieve each objective (10 points); and

(D) The extent to which procedures described by the applicant in its application are likely to ensure effective administration of the proposed project (10 points).

(b) *Key personnel.* (Total: 30 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant will use to develop the long-range plan or application.

(2) The Secretary looks for information that shows—

(i) The extent to which the applicant involves its own personnel, students, and governing board members in the planning process (12 points);

(ii) The qualifications of the project director (6 points);

(iii) The role of each of the key personnel who will participate in the planning process as part of the project (6 points); and

(iv) The time that each person referred to in paragraphs (b)(2)(i) through (iii) of this section plans to commit to the project (6 points).

(c) *Budget and cost effectiveness.* (Total: 10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget that is cost effective.

(2) The Secretary looks for information that shows that costs are reasonable in relation to the objectives of the project.

(d) *Evaluation design.* (Total: 10 points)

(1) The Secretary reviews each application for information that shows the quality of the proposed evaluation design for the project.

(2) The Secretary looks for information that shows that—

(i) The methods of evaluation are appropriate for a planning process; and

(ii) The evaluation criteria are appropriate for determining success in achieving the objectives of the project.

(Authority: 20 U.S.C. 1057, 1059, 1060, 1062, and 1221e-3)

§ 624.32 Long-range plan to achieve self-sufficiency.

(a) The Secretary reviews each application for a development grant for information that shows whether the applicant's long-range plan provides for self-sufficiency.

(1) In the case of an application for a renewable development grant, the Secretary looks for information that shows whether implementing the long-range plan is likely to result in that institution *moving toward self-sufficiency* by the end of the proposed grant period.

(2) In the case of an application for a non-renewable development grant, the Secretary looks for information that shows whether implementing the long-range plan is likely to result in that institution *becoming self-sufficient* by the end of the proposed grant period.

(b) In reviewing the applicant's long-range plan the Secretary looks for information showing that—

(1) The institution identifies the major problems or deficiencies that inhibit it from becoming self-sufficient and thriving; and

(2) The institution proposes effective strategies to overcome each problem or deficiency.

(c) The Secretary does not consider an application for a development grant unless the applicant's long-range plan meets the appropriate criterion in paragraph (a) of this section.

NOTE: The Secretary does not assign points to this criterion. Rather, the Secretary reviews an application under § 624.31 or § 624.33 if it meets the criterion and rejects it if it does not.

(Authority: 20 U.S.C. 1057, 1059, 1060, 1064, 1066, and 1221e-3)

§ 624.33 Selection criteria for development grants.

(a) *Plan of operation.* (Total: 10 points)

(1) The Secretary reviews each application for information that shows the quality of the project's plan of operation.

(2) The Secretary looks for information that shows the following:

(i) The extent to which objectives for each activity are clear, specific, and measurable (10 points).

(ii) The quality of the project plan to achieve the objectives. The Secretary bases this assessment of quality on—

(A) The quality of the implementation strategy (a complete description of what the applicant plans to do and how the applicant plans to do it) for each activity (10 points);

(B) The extent to which achieving the objectives of the proposed activities in the project plan is likely to help the institution attain self-sufficiency (20 points);

(C) A realistic timetable for achieving the objectives of each activity (5 points);

(D) The extent to which the applicant will use its own resources and personnel to achieve each objective (15 points); and

(E) The extent to which procedures described by the applicant in its application are likely to ensure effective administration of the proposed project (10 points).

(b) Quality of key *personnel*. (Total: 10 points)

(1) The Secretary reviews each application for information that shows the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section plans to commit to the project.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness*. (Total: 10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget that is cost effective.

(2) The Secretary looks for information that shows that costs are reasonable in relation to the objectives of the project.

(d) *Evaluation design*. (Total: 10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation design for the project.

(2) The Secretary looks for information showing that proposed methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(Authority: 20 U.S.C. 1057, 1060, and 1221e-3)

§ 624.34 Grants under cooperative arrangements.

(a) In considering applications from institutions that propose to carry out projects under a cooperative arrangement, the Secretary gives priority to those applications that the Secretary determines are—

(1) Geographically sound; and

(2) Economically sound.

(b) The Secretary determines that a cooperative arrangement is—

(1) Geographically sound based on the proximity of the participating institutions; and

(2) Economically sound if participating institutions demonstrate that each activity proposed in the application will be carried out more efficiently and effectively at less cost than would be possible if each participating institution were awarded a grant individually.

(c) The Secretary considers each participating institution in a cooperative arrangement to be a separate grantee for purposes of this part.

(Authority: 20 U.S.C. 1069)

Subpart E—What Conditions Must a Grantee Meet?

§ 624.40 Maintenance of eligibility.

(a) A grantee under an Institutional Aid Program must maintain its eligibility under § 624.2(b) (1) through (3) of 34 CFR 627.2 (b), (c), or (d) as appropriate for the duration of the grant period.

(b) An institution that receives a grant for a grant period lasting more than one year must annually submit to the Secretary an assurance that it continues to meet eligibility requirements under § 624.2(b) (1) through (3) or 34 CFR 627.2 (b)(1)(i) through (iii), (c)(1)(i) through (iii), or (d)(1) as appropriate.

(Authority: 20 U.S.C. 1058, 1061, and 1064)

§ 624.41 Fiscal requirements.

A grantee shall use Federal funds under the Institutional Aid Programs to supplement—and not supplant—funds the grantee would otherwise have available to plan, develop, or implement activities authorized under the Institutional Aid Programs.

(Authority: 20 U.S.C. 1066)

§ 624.42 Restrictions on the use of funds.

A grantee may not use funds under any Institutional Aid Program for any of the following:

(a) Activities other than those in its approved application.

(b) Activities that are inconsistent with any State plan of higher education applicable to the institution.

(c) Activities that are inconsistent with a State plan for desegregation of higher education, if any, applicable to the institution.

(d) A school or department of divinity or any religious worship or sectarian activity.

(e) General operating and maintenance expenses.

(f) Indirect costs.

(g) Construction costs except for minor remodeling as part of an approved activity.

(Authority: 20 U.S.C. 1066 and 1069b)

Subpart F—[Reserved]

Subpart G—What Compliance Procedures Does the Secretary Use?

§ 624.60 Failure to maintain eligibility.

If an institution does not continue to meet the basic eligibility requirements under § 624.2(b) (1) through (3) or 34 CFR 627.2 (b)(1)(i) through (iii), (c)(1)(i) through (iii) or (d)(1) during the grant period, the Secretary terminates the grant.

(Authority: 20 U.S.C. 1058, 1061, and 1064)

PART 625—STRENGTHENING PROGRAM

Subpart A—General

Sec.
625.1 Strengthening Program.
625.2 Designation of eligibility.
625.3 Waiver of E&G requirement.
625.4 Regulations that apply to the Strengthening Program.

Subpart B—What Kinds of Grants Does the Secretary Award Under the Strengthening Program?

625.10 Types of grants under the Strengthening Program.
625.11 Allowable activities.

Subpart C—How Does One Apply for a Grant?

625.20 Limitations on applications.
625.21 Planning grants and development grants.

Subpart D—How Does the Secretary Make a Grant?

625.30 General rules.
625.31 Funding availability.

AUTHORITY: Secs. 311-313 and 341-347 of Title III of the Higher Education Act of 1965 (20 U.S.C. 1057-1059 and 1066-1069c), unless otherwise noted.

SOURCE: 47 FR 546, Jan. 5, 1982, unless otherwise noted.

Subpart A—General

§ 625.1 Strengthening program.

The Strengthening Institutions Program (referred to in these regulations as the Strengthening Program) assists eligible institutions of higher education to become self-sufficient by providing funds to improve their academic quality and strengthen their planning, management, and fiscal capabilities.

(Authority: 20 U.S.C. 1051 and 1057)

§ 625.2 Designation of eligibility.

(a) The Secretary designates an institution of higher education or a branch campus as eligible to be considered for a grant under the Strengthening Program if the Secretary determines that—

(1) In the academic year in which it applies for designation it satisfies the basic institutional eligibility requirements in 34 CFR 624.2;

(2) A substantial percentage of its full-time equivalent (FTE) undergraduate enrollment received Pell grants in the base year;

(3) The average Pell grant received by its students in the base year was high in comparison with the average Pell grant received by students at comparable institutions in that year; and

(4) The average educational and general (E&G) expenditure per FTE undergraduate student in the base year was less than the average E&G expenditure per FTE undergraduate student at institutions that offer similar instruction in that year.

(b) The Secretary groups comparable institutions and institutions that offer similar instruction for purposes of determining institutional eligibility.

(c) The Secretary assigns points to each of the three factors described in paragraphs (a) (2) through (4) of this section as follows:

(1) An institution may receive up to 100 points on the basis of the number of Pell grant recipients divided by the number of FTE undergraduate students enrolled at the institution. The points awarded reflect an institution's position on a scale of 1-100 when compared to the percent of Pell grant recipients enrolled at comparable institutions. (See the illustrative example in paragraph (c)(4) of this section.)

(2) An institution may receive up to 100 points on the basis of the total amount of the Pell grant awards that students received who were enrolled at the institution divided by the number of Pell grant recipients at that institution. The points awarded reflect an institution's position on a scale of 1-100 when compared to the average Pell grant award of students enrolled at comparable institutions. (See the illustrative example in paragraph (c)(4) of this section.)

(3) An institution may receive up to 100 points on the basis of its average E&G expenditure per FTE undergraduate student. Points are assigned to an institution in an inverse relationship to the average E&G expenditure per FTE undergraduate student at that institution. (See the illustrative example in paragraph (c)(4) of this section.)

(4) The Secretary assigns points for the three institutional eligibility criteria described in paragraphs (a) (2) through (4) of this section as follows:

(i) The Secretary develops a table by—

(A) Listing in rank order all comparable institutions nationwide and dividing them into 100 groups, from the highest value for each criterion to the lowest, with equal numbers of institutions in each group; and

(B) Identifying the range of values for each criterion that the institutions within each of the 100 groups possess.

(ii) The Secretary assigns a score from 1-100 for each of the range of values on the table.

(iii) The Secretary determines an applicant institution's score for each criterion by finding the range of values on the table that includes the applicant institution's value and assigning the score associated with that range of values.

(iv) For example, using the criterion in paragraph (a)(2) pertaining to percentage enrollment, all 2-year public institutions nationwide that enroll students receiving Pell grants in the base year would be listed in order of their percentage enrollment of Pell grant recipients from the highest percentage to the lowest and divided into 100 equal groups. If there are 1,000 such institutions, they would be placed in 100 groups with 10 institutions in each group. The percentage of Pell grant recipients enrolled at each of the 10 institutions in the top group is identified and the percent enrollment range for the group is determined. The range of percentage values for each of the remaining groups is similarly determined.

Consider the example provided in the following table. In the top group of institutions, between 99.6 and 100 percent of the student body receives Pell grants; in the next highest group of institutions the range of values is between 99.0 and 99.5 percent; in the lowest group of institutions the range is between 0.1 and 0.5 percent. An applicant institution would receive 100 points if its percentage of Pell grant recipients is between 99.6 and 100; 99 points if its percentage of Pell grant recipients is between 99.0 and 99.5; and 1 point if its percentage of Pell grant recipients is between 0.1 and 0.5. The same procedures apply when assigning points for each eligibility criterion. The Secretary adds the points for each of the three criteria. If the total is above the minimum that the Secretary announces in the FEDERAL REGISTER and the institution meets the basic institutional eligibility requirements in 34 CFR 624.2, then the institution is deemed eligible to apply for assistance.

STRENGTHENING PROGRAM

Point value	Range of values		
	Percent of FTE undergraduate enrollment receiving Pell grant awards	Average Pell grant award per recipient (in dollars)	Average E&G expenditure per FTE undergraduate student (in dollars)
100	99.6–100	1,600–1,750	1–600
99	99.0–99.5	1,550–1,599	601–750
98	98–98.9	1,500–1,549	....
2	0.6–0.9	26–50	6,000–8,000
1	0.1–0.5	1–25	8,001 +

NOTE: The values in the explanation above are hypothetical and are not based on actual data.

(d)(1) In determining whether an institution satisfies the criteria in paragraphs (a) (2) through (4) of this section, the Secretary adds the points earned for each of the three factors. Thus, eligibility is based on the sum of the three factors combined rather than each factor taken separately.

(2) All institutions with a point total above the minimum threshold established by the Secretary satisfy the eligibility criteria in paragraphs (a) (2) through (4) of this section.

(e) Institutions receiving a waiver of the E&G criterion (see § 625.3) described in paragraph (a)(4) of this section must meet a minimum threshold established by the Secretary on the combined remaining eligibility factors described in paragraphs (a) (2) and (3) of this section. For example, to be eligible, an institution that is granted a waiver of the E&G criterion would have to obtain a minimum number of points out of the 200 points available on the criteria in paragraphs (a) (2) and (3) of this section.

(f) The Secretary establishes the minimum threshold for the combined points (as described in paragraphs (d)(1) and (2) of this section) to ensure that the pool of applicants for each type of grant will be at least twice as large as the pool of grantees.

(g) Through a notice in the FEDERAL REGISTER the Secretary annually—

(1) Publishes the tables the Secretary uses to assign points for each eligibility factor;

(2) Announces the total number of points an institution must receive to satisfy the eligibility factors described in paragraphs (a)(2) through (4) of this section; and

(3) Announces the total number of points an institution must receive to satisfy the eligibility factors described in paragraphs (a)(2) and (3) of this section if that institution requests a waiver of the factor in paragraph (a)(4) of this section.

(Authority: 20 U.S.C. 1058 and 1221e-3)

§ 625.3 Waiver of E&G requirement.

(a) An institution may seek a waiver of the E&G requirement in § 625.2(a)(4) by submitting to the Secretary a written statement including information and an explanation as to why the Secretary should grant the waiver.

(b) The Secretary may waive the E&G requirement in § 625.2(a)(4) if the Secretary determines that—

(1) The institution's failure to comply with the requirement is caused by factors that distort that requirement with regard to that institution; and

(2) The institution's designation as an eligible institution for this program is consistent with the purposes of the program.

(c) Factors that the Secretary considers may distort an institution's E&G expenditures per FTE undergraduate student include, but are not limited to, the following:

(1) Low student enrollment.

(2) Size of the campus.

(3) Location in an unusually high cost of living area.

(4) High energy costs.

(5) An increase in State funding to that institution in order to comply with a desegregation plan for higher education.

(6) High cost professional training which is organized, budgeted, and conducted separately from regular graduate and undergraduate instruction, such as medical, dental, and legal programs.

Authority: 20 U.S.C. 1067 and House Report 96-1337, 96th Cong. 2d Sess. p. 161 1980))

§625.4 Regulations that apply to the Strengthening Program.

The following regulations apply to he Strengthening Program:

(a) The regulations in 34 CFR Part 24.

(b) The regulations in this Part 625.

Authority: 20 U.S.C. 1221e-3, 1057-1059, nd 1066-1069c)

ubpart B—What Kinds of Grants Does the Secretary Award Under the Strengthening Program?

625.10 Types of grants under the Strengthening Program.

Under the Strengthening Program he Secretary awards—

(a) Planning grants;

(b) Renewable development grants or a period of one to three years; and

(c) Non-renewable development rants for a period of four to seven ears.

Authority: 20 U.S.C. 1059)

625.11 Allowable activities.

(a) Planning grants may be used for he purposes described in 34 CFR 24.11(a)(1) through (3).

(b) Development grants may be used carry out any of the activities listed 34 CFR 624.13(b) or other activities hat promote self-sufficiency.

uthority: 20 U.S.C. 1051, 1057, and 1059)

ubpart C—How Does One Apply for a Grant?

625.20 Limitations on applications.

(a) Regardless of whether an institu- on is applying for a grant individual- or as part of a cooperative arrangement, it may not apply in the same fiscal year for a renewable (one-to-three-year) development grant and a non-renewable (four-to-seven-year) development grant.

(b) An institution that has received a non-renewable development grant—

(1) Under this part is ineligible to apply for any other grant under this part, either individually or as part of a cooperative arrangement; and

(2) Under the Aid to Institutions with Special Needs Program (Special Needs Program) or Challenge Grant Program may not apply for a renewable grant under this part, either individually or as part of a cooperative arrangement.

(c) An institution may not apply for a planning grant solely to prepare an application for a development grant under this part unless the institution submits a long-range plan containing all the elements described in 34 CFR 624.22.

(d)(1) Except as provided in paragraph (d)(2) of this section, an institution may not apply for a renewable development grant if the award of the grant results in the institution receiving funds from more than one renewable development grant during any fiscal year.

(2) An institution may apply for a renewable development grant even if the award of that grant would result in the institution receiving funds from two renewable development grants during any fiscal year, if one of the grants is awarded to a cooperative arrangement and the other is awarded individually.

(e)(1) Except as provided in paragraph (e)(2) of this section, an institution may not apply for a non-renewable development grant if it has received a non-renewable development grant under the Special Needs Program.

(2) An institution that has completed, or is in the final year, of a non-renewable development grant under the Special Needs Program may apply for a non-renewable development grant if the institution—

(i) Is otherwise eligible for a non-renewable development grant under this part; and

(ii) Demonstrates to the Secretary's satisfaction that unforeseeable circumstances prevented it from—

(A) Achieving or sustaining self-sufficiency; and

(B) Otherwise fulfilling the objectives of its previous development grant under the Special Needs Program.

(Authority: 20 U.S.C. 1057 and 1059)

§ 625.21 Planning grants and development grants.

(a) In its application for a grant under this program an applicant shall—

(1) Indicate whether it is applying individually or under a cooperative arrangement for—

(i) A planning grant;

(ii) A renewable development grant; or

(iii) A non-renewable development grant; and

(2) Include the applicable information required under 34 CFR 624.21 and, if appropriate, § 624.23.

(b) If the application is for a planning grant, the applicant shall indicate whether it will use the grant to—

(1) Develop its long-range plan;

(2) Develop an application for a development grant; or

(3) Develop both a long-range plan and an application for a development grant.

(Authority: 20 U.S.C. 1059 and 1066)

Subpart D—How Does the Secretary Make a Grant?

§ 625.30 General rules.

(a) Using the procedures in 34 CFR 624.30, the Secretary evaluates applications for—

(1) Planning grants on the basis of the criteria in 34 CFR 624.31; and

(2) Development grants on the basis of the criteria in 34 CFR 624.32 and 624.33.

(b) In the case of applications for development grants, the Secretary gives special consideration to applicants that propose to carry out the activities described in 34 CFR 624.13(b).

(Authority: 20 U.S.C. 1057, 1066, and 1068)

§ 625.31 Funding availability.

(a) The Secretary makes availabl for any fiscal year, the following:

(1) For awards to junior or community colleges, not less than 24 percen of the funds appropriated under thi program.

(2) For awards for non-renewable development grants, not less than 25 percent of the funds appropriated unde this program.

(b) Each year the Secretary announces through a notice in the F ERAL REGISTER—

(1) The amount of funds that will b used to fund non-renewable development grants under this program; and

(2) The maximum amount of fund that the Secretary may award to grantee that year for each type o grant available under this program.

(Authority: 20 U.S.C. 1069c)

PART 626—SPECIAL NEEDS PROGRAM

Subpart A—General

Sec.
626.1 Special Needs Program.
626.2 Designation of eligibility.
626.3 Waiver of E&G requirement.
626.4 Regulations that apply to the Special Needs Program.

Subpart B—What Kinds of Grants Does the Secretary Award Under the Special Needs Program?

626.10 Types of grants under the Special Needs Program.
626.11 Allowable activities.

Subpart C—How Does One Apply for a Grant?

626.20 Limitation on applications.
626.21 Planning grants and development grants.

Subpart D—How Does the Secretary Make a Grant?

626.30 General rules.
626.31 Funding availability.

Subpart E—What Conditions Must a Grantee Meet?

626.40 Cost sharing.

AUTHORITY: Secs. 321-324 and 341-347 of Title III of the Higher Education Act of

1965 (20 U.S.C. 1060-1063 and 1066-1069c), unless otherwise noted.

SOURCE: 47 FR 548, Jan. 5, 1982, unless otherwise noted.

Subpart A—General

§ 626.1 Special Needs Program.

The Aid to Institutions with Special Needs Program (referred to in these regulations as the Special Needs Program) assists institutions of higher education to become self-sufficient by providing funds to improve their academic quality and strengthen their planning, management, and fiscal capabilities.

(Authority: 20 U.S.C. 1051 and 1221e-3)

§ 626.2 Designation of eligibility.

(a) The Secretary designates an institution of higher education or a branch campus as eligible to be considered for a grant under the Special Needs Program if the Secretary determines that—

(1) In the academic year in which it applies for designation—

(i) It satisfies the basic institutional eligibility requirements in 34 CFR 624.2;

(ii) It has an enrollment of at least 100 full-time equivalent (FTE) students; and

(iii) In the case of a branch campus, it is located in a community different from that in which its parent institution is located.

(2) A substantial percentage of its FTE undergraduate enrollment received assistance under the need-based assistance programs (Pell Grant, Supplemental Educational Opportunity Grant, National Direct Student Loan, and College Work-Study Programs) in the base year;

(3) The average amount of need-based assistance received by its students in the base year was high in comparison with the average amount of assistance received by students under those programs at comparable institutions in that year; and

(4) The average educational and general (E&G) expenditure per FTE undergraduate student in the base year was less than the average E&G expenditure per FTE undergraduate student at institutions that offer similar instruction in that year.

(b) The Secretary groups comparable institutions and institutions that offer similar instruction for purposes of determining institutional eligibility.

(c) The Secretary assigns points to each of the three factors described in paragraph (a) (2) through (4) of this section as follows:

(1) An institution may receive up to 50 points on the basis of the number of recipients of need-based assistance divided by the number of FTE undergraduate students enrolled at the institution. The points awarded reflect an institution's position on a scale of 1-50 when compared to the percent of need-based assistance recipients enrolled at comparable institutions. (See the illustrative example in paragraph (c)(4) of this section.)

(2) An institution may receive up to 50 points on the basis of the total amount of need-based assistance received by students enrolled at the institution divided by the total number of recipients of need-based assistance enrolled at that institution. The points awarded reflect an institution's position on a scale of 1-50 when compared to the average amount of need-based assistance received by students at comparable institutions. (See the illustrative example in paragraph (c)(4) of this section.)

(3) An institution may receive up to 100 points on the basis of its average E&G expenditures per FTE undergraduate student. Points are assigned to an institution in an inverse relationship to the average E&G expenditure per FTE undergraduate student at that institution. (See the illustrative example in paragraph (c)(4) of this section.)

(4) The Secretary assigns points for the three institutional eligibility criteria described in paragraphs (a)(2) through (4) of this section as follows:

(i) The Secretary develops a table by—

(A) Listing in rank order all comparable institutions nationwide that enroll students receiving need-based assistance in the base year and dividing them into 50 groups, from the highest value for each criterion to the lowest, with equal numbers of institutions in each group; and

(B) Identifying the range of values for each criterion that the institutions within each of the 50 groups possess.

(ii) The Secretary assigns a score for each of the range of values.

(iii) The Secretary determines an applicant institution's score for each criterion by finding the range of values on the table that includes the applicant institution's value and assigning the score associated with that range of values.

(iv) For example, using the criterion in paragraph (a)(2) of this section pertaining to percentage enrollment, all 2-year public institutions nationwide would be listed in order of their percentage enrollment of need-based aid recipients from the highest percentage to the lowest and divided into 50 equal groups. If there are 1000 such institutions, they would be placed in 50 groups with 20 institutions in each group. The percentage of need-based aid recipients enrolled at each of the 20 institutions in the top group is identified and the percent enrollment range for the group is determined. The range of percentage values for each of the remaining groups is similarly determined.

Consider the example provided in the following table. In the top group of institutions, between 99.0 and 100 percent of the student body receives need-based aid; in the next highest group of institutions the range of values is between 97.0 and 98.9 percent; in the lowest group of institutions the range is between 1.0 and 0.9 percent. An applicant institution would receive 50 points if its percentage of need-based aid recipients is between 99.0 and 100; 49 points if its percentage of need-based aid recipients is between 97.0 and 98.9; and 1 point if its percentage of need-based aid recipients is between 1.0 and 0.9. The same procedures apply when assigning points for each eligibility criterion. The Secretary adds the points for each of the three criteria. If the total is above the minimum that the Secretary announces in the FEDERAL REGISTER and the institution meets the basic institutional eligibility requirements in 34 CFR 624.2, then the institution is deemed eligib to apply for assistance.

SPECIAL NEEDS PROGRAM

Point score	Range of values		
	Percent of FTE undergraduate enrollment receiving need-based assistance	Average amount of need-based assistance per recipient (in dollars)	Average E&G expenditu per FTE undergradu ate stude (in dolla
50	99.0–100	3,500+	1-7
49	97.0–98.9	3,000–3,499	751-8
1	0.1–.9	1–100	8,001+

[1] When computing points for the E&G criterion, multiply t point score by 2 to obtain the proper score based on a sca of 1–100. For example, if the E&G expenditure of applicant institution was $900, the applicant would earn points (49 multiplied by 2).

NOTE: The values in the explanation abov are hypothetical and are not based o actual data.

(d)(1) In determining whether an in stitution satisfies the criteria in para graphs (a)(2) through (4) of this sec tion, the Secretary adds the point earned for each of the three factors Thus, eligibility is based on the sum o the three factors combined rather than each factor taken separately.

(2) All institutions with a point total above the minimum threshold established by the Secretary satisfy the eligiblity criteria in paragraphs (a)(2) through (4) of this section.

(e) Institutions receiving a waiver of the E&G criterion (see § 626.3) described in paragraph (a)(4) of this section must meet a minimum threshold established by the Secretary on the combined remaining eligibility factors described in paragraphs (a)(2) and (3) of this section. For example, to be eligible, an institution that is granted a waiver of the E&G criterion will have to obtain a minimum number of points out the 100 points available on the criteria in paragraphs (a) (2) and (3) of this section.

(f) The Secretary establishes the minimum threshold for the combined points (as described in paragraphs (d) (1) and (2) of this section) to ensure that the pool of applicants for each type of grant will be at least twice as large as the pool of grantees.

(g) Through a notice in the FEDERAL REGISTER the Secretary annually—

(1) Publishes the tables the Secretary uses to assign points for each eligibility factor;

(2) Announces the total number of points an institution must receive to satisfy the eligibility factors described in paragraphs (a)(2) through (4) of this section; and

(3) Announces the total number of points an institution must receive to satisfy the eligibility factors described in paragraphs (a) (2) and (3) of this section if that institution requests a waiver of the factor in paragraph (a)(4) of this section.

(Authority: 20 U.S.C. 1061 and 1221e-3)

§ 626.3 Waiver of E&G requirement.

(a) An institution may seek a waiver of the E&G requirement in § 626.2(a)(4) by submitting to the Secretary a written statement including information and an explanation as to why the Secretary should grant the waiver.

(b) The Secretary may waive the E&G requirement in § 626.2(a)(4) if the Secretary determines that—

(1) The institution's failure to comply with the requirement is caused by factors that distort that requirement with regard to that institution; and

(2) The institution's designation as an eligible institution for this program is consistent with the purposes of the program.

(c) For the purposes of paragraph (b)(1) of this section, factors that the Secretary considers may distort an institution's E&G expenditures per FTE undergraduate student include, but are not limited to, the following:

(1) Low student enrollment.

(2) Size of the campus.

(3) Location in an unusually high cost of living area.

(4) High energy costs.

(5) An increase in State funding to that institution in order to comply with a desegregation plan for higher education.

(6) High cost professional training which is organized, budgeted, and conducted separately from regular graduate and undergraduate instruction, such as medical, dental, and legal programs.

(d) For purposes of paragraph (b)(2) of this section, factors that the Secretary may also use in determining whether an institution's designation as an eligible institution is consistent with the needs of this program include whether the institution has—

(1) Extreme financial limitations requiring low faculty salaries, low cost of instruction for students, and low library expenditures;

(2) Little or no endowment, whether or not unrestricted;

(3) A high student-to-faculty ratio;

(4) A substantial percentage of students receiving need-based Federal student assistance;

(5) Limited library resources;

(6) A low percentage of faculty with earned doctoral degrees;

(7) Poor physical facilities and limited resources to maintain them;

(8) Little or no support from foundations, alumni, or corporations;

(9) Limited or no sponsored research or faculty publications;

(10) An inadequate development office and a limited capacity for long-range planning; and

(11) Poor or inadequate fiscal management and accounting procedures.

(Authority: 20 U.S.C. 1061 and 1067, and House Rept. 96-1337, 96 Cong. 2d Sess. p. 161 (1980))

§ 626.4 Regulations that apply to the special needs program.

The following regulations apply to the Special Needs Program:

(a) The regulations in 34 CFR Part 624.

(b) The regulations in this Part 626.

(Authority: 20 U.S.C. 1060-1063, 1066-1069c, and 1221e-3)

Subpart B—What Kinds of Grants Does the Secretary Award Under the Special Needs Program?

§ 626.10 Types of grants under the special needs program.

Under the Special Needs Program the Secretary awards—

(a) A planning grant for a period of one year; and (b)(1) A non-renewable development grant for a period of one to five years; or

(2) If an institution previously received a planning grant under this program, a non-renewable development grant for a period of one to four years.

(Authority: 20 U.S.C. 1062)

§ 626.11 Allowable activities.

(a) Planning grants may be used to develop a long-range plan as described in 34 CFR 624.11(a)(1).

(b) Development grants may be used to carry out the activities listed in 34 CFR 624.13(b).

(Authority: 20 U.S.C. 1060 and 1062)

Subpart C—How Does One Apply for a Grant?

§ 626.20 Limitation on applications.

An institution that has received a non-renewable development grant under this part or under the Strengthening Program (34 CFR Part 625) may not apply for a grant under this part, either individually or as part of a cooperative arrangement.

(Authority: 20 U.S.C. 1060, 1062 and 1221e-3)

§ 626.21 Planning grants and development grants.

In its application for a grant under this program, an applicant shall—

(a) Indicate whether it is applying individually or as part of a cooperative arrangement for—

(1) A planning grant; or

(2) A development grant;

(b) Include the applicable information required under 34 CFR 624.21; and

(c) In the case of an application for a development grant, provide assurances to the Secretary that it will have the fiscal resources to pay for its share of assistance beyond the second year.

(Approved by the Office of Management and Budget under control number 1840-0593)

(Authority: 20 U.S.C. 1060, 1062, and 1066)

[47 FR 548, Jan. 5, 1982, as amended at 53 FR 49146, Dec. 6, 1988]

Subpart D—How Does the Secretary Make a Grant?

§ 626.30 General rules.

Using the procedures in 34 CFR 624.30, the Secretary evaluates applications for—

(a) Planning grants on the basis of the criteria in 34 CFR 624.31; and

(b) Development grants on the basis of the criteria in 34 CFR 624.32 and 624.33.

(Authority: 20 U.S.C. 1060, 1066, and 1068)

§ 626.31 Funding availability.

(a) The Secretary makes available, for any fiscal year, the following:

(1) For awards to junior or community colleges with special needs, not less than 30 percent of the funds appropriated under this program.

(2) For awards to institutions with special needs that have historically served substantial numbers of black students, not less than 50 percent of the amount received by those institutions under the Strengthening Developing Institutions Program (SDIP) for fiscal year 1979. Fifty percent of the amount these institutions received under the SDIP for fiscal year 1979 is $27,035,000.

(b) The Secretary considers institutions that have historically served substantial numbers of black students to be those listed in the 1978 publication by the National Center for Education Statistics entitled *Traditionally Black Institutions of Higher Education: Their Identification and Selected Characteristics.*

(c) Each year the Secretary announces in a notice in the FEDERAL REGISTER—

(1) The amount of funds that will be used to fund non-renewable development grants under this program; and

(2) The maximum amount of funds that the Secretary may award to a grantee that year for each type of grant available under this program.

(Authority: 20 U.S.C. 1069c)

Subpart E—What Conditions Must a Grantee Meet?

§ 626.40 Cost sharing.

The Secretary pays the entire cost of any grant for the first two years of assistance under this program. After that the Secretary pays—

(a) Ninety percent of the cost in the third year;

(b) Eighty percent of the cost in the fourth year; and

(c) Seventy percent of the cost in the fifth year.

(Authority: 20 U.S.C. 1063)

PART 627—CHALLENGE GRANT PROGRAM

Subpart A—General

Sec.
627.1 Challenge Grant Program.
627.2 Eligible applicants.
627.3 Regulations that apply to the Challenge Grant Program.

Subpart B—What Kind of Grant Does the Secretary Award Under the Challenge Grant Program?

627.10 Type of grant under the Challenge Grant Program.
627.11 Allowable activites.

Subpart C—How Does One Apply for a Grant?

627.20 General.

Subpart D—How Does the Secretary Make a Grant?

627.30 General rules.
627.31 Evaluation of applications for continuation awards.

Subpart E—What Conditions Must a Grantee Meet?

627.40 Matching requirements.

Authority: Secs. 331-332 and 341-347 of he Title III of the Higher Education Act of 965 (20 U.S.C. 1064-1069c), unless otherwise noted.

Source: 47 FR 550, Jan. 5, 1982, unless therwise noted.

Subpart A—General

§ 627.1 Challenge Grant Program.

The Challenge Grant Program provides Federal financial assistance as an incentive for eligible institutions of higher education to seek alternative sources of funding to become self-sufficient.

(Authority: 20 U.S.C. 1051 and House Rept. 96-520, 96th Cong. 1st Sess., pp. 16-17. (1979))

§ 627.2 Eligible applicants.

(a) An institution of higher education or a branch campus is eligible to apply for a grant under the Challenge Grant Program if—

(1) The Secretary has designated it as an eligible insititution under the Strengthening Program (34 CFR 625.2) or Special Needs Program (34 CFR 626.2); or

(2) The Secretary has designated it as an eligible institution under paragraph (b), (c) or (d) of this section.

(b)(1) The Secretary designates an institution of higher education as eligible to be considered for a grant under this program if that institution—

(i) Does not award a bachelor's degree; but

(ii) Is, and has been for the five academic years preceding the academic year for which it seeks assistance, legally authorized by the State in which it is located to provide an educational program for which it awards a graduate or professional degree;

(iii) Satisfies the requirements of 34 CFR 624.2, other than the requirement of § 624.2(b)(2); and

(iv) Would have qualified as an eligible institution under 34 CFR 625.2 or 626.2 if—

(A) The requirement of 34 CFR 624.2(b)(2) were disregarded; and

(B) Calculations were based on need-based aid received by graduate level students, rather than undergraduate level students.

(2) "Comparable institutions" for purposes of paragraph (b) of this section as applied to determining eligibility under 34 CFR 625.2 or 626.2 means the types of institutions described in

paragraphs (b)(1) (i) and (ii) of this section.

(c)(1) the Secretary may designate an institution of higher education as eligible to be considered for a grant under this program if that institution—

(i) Is not a junior or community college; and

(ii) Does not award a bachelor's, graduate, postgraduate, or professional degree; but

(iii) Is, and has been for the five academic years preceding the academic year for which it seeks assistance, legally authorized by the State in which it is located to provide a medical education program;

(iv) Makes a substantial contribution to medical education opportunities for minorities and the economically disadvantaged;

(v) Satisfies the requirements of 34 CFR 624.2, other than the requirement of § 624.2(b)(2); and

(vi) Would have qualified as an eligible institution under 34 CFR 625.2 or 626.2 based on the enrollment of students in its medical education program if the Secretary had waived the requirement of § 624.2(b)(2).

(2) "Comparable institutions" for purposes of paragraph (c) of this section as applied to determining eligibility under 34 CFR 625.2 or 626.2 means the types of institutions described in paragraphs (c)(1) (i), (ii), and (iii) of this section.

(d) The Secretary designates an institution of higher education as eligible to be considered for a grant under this program if that institution—

(1) Provides a medical education program which—

(i) Leads to a doctor of medicine degree; or

(ii) Is not less than a two-year program fully acceptable toward such a degree;

(2) In the base year enrolled minority and educationally disadvantaged students constituting at least 35 percent of its full-time equivalent enrollment; and

(3) In fiscal year 1980 received a grant as a two-year medical school under section 788(a) of the Health Professions Education Assistance Act of 1976.

(e) The Secretary announces annually in a notice in the FEDERAL REGISTER the conditions, if any, under which the Secretary will waive the requirement of 34 CFR 624.2(b)(2) in the case of an institution applying for eligibility under paragraph (c) of this section.

(Authority: 20 U.S.C. 1064)

§ 627.3 Regulations that apply to the Challenge Grant Program.

The following regulations apply to the Challenge Grant Program:

(a) Unless otherwise indicated, the regulations in 34 CFR Part 624.

(b) The regulations in this Part 627.

(c) Applicable provisions of 34 CFR Parts 625 and 626.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 1064)

Subpart B—What Kind of Grant Does the Secretary Award Under the Challenge Grant Program?

§ 627.10 Type of grant under the Challenge Grant Program.

(a) Under the Challenge Grant Program the Secretary awards a non-renewable development grant to an applicant for a period of up to five years.

(b) The Secretary does not award planning grants under this program.

(c) The Secretary may award a grant under this program to an institution that is simultaneously receiving a nonrenewable development grant under the Strengthening Program or the Special Needs Program.

(Authority: 20 U.S.C. 1064 and 1065)

§ 627.11 Allowable activities.

(a) If an institution qualifies for a grant on the basis of being designated by the Secretary as eligible under the Strengthening Program, as described in 34 CFR 625.2, it may use its grant to carry out the activities authorized under the Strengthening Program (see 34 CFR 625.11).

(b) If an institution qualifies for a challenge grant on the basis of being designated by the Secretary as eligible under the Special Needs Program, as described in 34 CFR 626.2, it—

(1) May use its grant to carry out the activities authorized under the

Special Needs Program (see 34 CFR 626.11); and

(2) Must use those funds for the purpose of—

(i) Achieving greater financial independence; and

(ii) Eradicating the applicable conditions—

(A) Listed in 34 CFR 626.3(d); and

(B) Discussed in its application for funds, as required in § 627.20(a)(2).

(c) If an institution qualifies for a grant on the basis of being designated by the Secretary as eligible under this program under one of the criteria described in § 627.2(b), (c) or (d), it may use its grant to carry out those activities listed in 34 CFR 624.13(b).

(Authority: 20 U.S.C. 1064 and 1065)

Subpart C—How Does One Apply for a Grant?

§ 627.20 General.

(a)(1) In its application for funding, an institution shall include the information required under 34 CFR 624.21 (a) and (b).

(2) In the case of an applicant that qualifies under this part on the basis of being designated an eligible institution under the Special Needs Program, the applicant shall discuss, in its application, those factors listed in 34 CFR 626.3(d) that are characteristic of its status as an institution with special needs.

(b) In its application for funding, an institution shall also include the following:

(1) Evidence that funds are available to the institution to match the funds it is requesting. The applicant may satisfy this requirement by—

(i) Providing a list of the source(s) and the amount of funds each source is contributing for each year of the grant period; and

(ii) Including a letter of intent from each source listed.

(2) An assurance that all matching funds will be—

(i) New funds previously unavailable to the institution from non-Federal sources for activities allowable under the Challenge Grant Program; and

(ii) Used to carry out those portions of the institution's long-range plan for which funds may be used under this part.

(c) If an applicant is a public institution, it shall include in its application—

(1) The comments of the appropriate State agency responsible for higher education in its State; or

(2) A statement that the institution requested the State agency to comment and the agency failed to comment.

(Authority: 20 U.S.C 1065,1066, and House Rept. 96-520, 96 Cong. 1st Sess., p. 16 (1979))

Subpart D—How Does the Secretary Make a Grant?

§ 627.30 General rules.

(a) Using the procedures in 34 CFR 624.30, the Secretary evaluates applications on the basis of the criteria in 34 CFR 624.32 and 624.33.

(b) Under this part the Secretary—

(1) Awards grants—

(i) To individual eligible institutions only;

(ii) For a period not to exceed the period for which matching funds, as described in § 627.40, are available to the applicant at the time its original application is submitted; and

(2) Gives preference in awarding grants to applications from institutions are receiving, or have received, grants under the Strengthening Program or Special Needs Program.

(Authority: 20 U.S.C. 1065)

§ 627.31 Evaluation of applications for continuation awards.

In addition to the requirements in 34 CFR Part 75 (EDGAR) that pertain to the Secretary's evaluation of continuation award applications, the Secretary looks for evidence that an institution's matching funds are available at the time it submits its application.

(Authority: 20 U.S.C. 1065)

Subpart E—What Conditions Must a Grantee Meet?

§ 627.40 Matching requirements.

A grantee must match the funds it receives under this program, on a dollar-for-dollar basis, with new funds that were previously unavailable to the applicant from non-Federal sources for activities allowable under the Challenge Grant Program.

(Authority: 20 U.S.C. 1065)

PART 628—ENDOWMENT CHALLENGE GRANT PROGRAM

Subpart A—General

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AUTHORITY: 20 U.S.C. 1065a, unless otherwise noted.

SOURCE: 49 FR 28521, July 21, 1984, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes affecting this part appear at 52 FR 11258, Apr. 8, 1987.

Subpart A—General

§ 628.1 What are the purposes of the Endowment Challenge Grant Program?

The Endowment Challenge Grant Program provides endowment challenge grants, which must be matched, to eligible institutions of higher education to—

(a) Establish or increase endowment challenge funds;

(b) Provide additional incentives to promote fund-raising activities; and

(c) Foster increased independence and self-sufficiency at those institutions.

(Authority: 20 U.S.C. 1065a)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987]

§ 628.2 Which institutions of higher education are eligible to apply for an endowment challenge grant?

An institution of higher education is eligible to apply for an endowment challenge grant if—

(a) It qualifies as an eligible institution for the Strengthening Institutions Program under 34 CFR 607.2;

(b) It qualifies as an eligible institution for the Strengthening Historically Black Colleges and Universities Program under 34 CFR 608.2;

(c) It would have qualified as an eligible institution for the Strengthening Institutions Program if 34 CFR 607.2(a)(3) referred to a postgraduate degree rather than a bachelor's degree;

(d) It would have qualified as an eligible institution for the Strengthening Historically Black Colleges and Universities Program if 34 CFR 608.2(a)(4)(i) referred to a postgraduate degree rather than a bachelor's degree; or

(e) It qualifies as an institution that nakes a substantial contribution to graduate or postgraduate medical educational opportunities for minorities nd the economically disadvantaged.

Authority: 20 U.S.C. 1064)

52 FR 36374, Sept. 28, 1987]

628.3 Under what conditions may an eligible institution designate a foundation as the recipient of an endowment challenge grant?

An eligible institution may designate
foundation, which was established
or the purpose of raising money for
hat institution, as the recipient of an
ndowment challenge grant if—

(a) The institution assures the Sec-
etary in its application that the foun-
ation is legally authorized to receive
he endowment fund corpus and to ad-
inister the endowment fund in ac-
ordance with the regulations in this
art;

(b) The foundation agrees to admin-
ter the endowment fund in accord-
nce with the regulations in this part;
nd

(c) The institution agrees to be liable
r any violation by the foundation of
ny applicable regulation, including any violation resulting in monetary liability.

(Authority: 20 U.S.C. 1065a(a)(6))

§ 628.4 How often is an institution eligible to receive an endowment challenge grant?

(a) Except as provided in paragraphs (b) and (c) of this section, an institution is eligible to receive an endowment challenge grant in a fiscal year, even if it has already received another endowment challenge grant in a previous fiscal year, as long as it does not receive endowment challenge grants in more than two fiscal years out of any five consecutive fiscal years.

(b) An institution that receives an endowment challenge grant in excess of $1,000,000 is ineligible to receive another endowment challenge grant in any amount for a period of ten years from the date it received the grant in excess of $1,000,000.

(c) An institution may not receive an endowment challenge grant if, at the time the Secretary selects it to receive a grant, it is still obtaining funds to match a previous endowment challenge grant.

(Authority: 20 U.S.C. 1065a(a)(4)(B))

[49 FR 28521, July 21, 1984, as amended at 52 FR 36375, Sept. 28, 1987]

§ 628.5 What regulations apply to the Endowment Challenge Grant Program?

(a) The following regulations apply to the Endowment Challenge Grant Program:

(1) The regulations in this Part 628.

(2)-(3) [Reserved]

(b)(1) The following regulations in the Education Department General Administrative Regulations (EDGAR) apply to the Endowment Challenge Grant Program:

(i) The regulations in 34 CFR 74.61(h) or 74.62, as applicable.

(ii) The regulations in 34 CFR 74.80 through 74.85.

(iii) The regulations in 34 CFR 75.100 through 75.102, and 75.217(d) and (e).

(iv) The regulations in 34 CFR Part 78.

(v) The regulations in 34 CFR part 79.

(2) Except as specifically indicated in paragraph (b)(1) of this section, the Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74 through 77 do not apply.

(Authority: 20 U.S.C. 1065a)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987; 52 FR 36375, Sept. 28, 1987; 55 FR 21715, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21715, May 25, 1990, § 628.5 was amended by adding paragraph (b)(1)(v) and revising paragraph (b)(2), effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date. For the convenience of the user, the superseded text is set forth as follows:

§ 628.5 What regulations apply to the Endowment Challenge Grant Program?

(b) * * *

(2) Except as specifically indicated in paragraph (b)(1) of this section, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74 through 77 and Part 79 do not apply.

* * * * *

§ 628.6 What definitions apply to the Endowment Challenge Grant Program?

The following definitions apply to the regulations in this part:

Endowment fund means a fund which excludes real estate and which is established by State law, by an institution of higher education, or by a foundation that is exempt from taxation and is maintained for the purpose of generating income for the support of the institution of higher education. The principal or corpus of the fund may not be spent. "Endowment fund" includes "quasi-endowment fund".

Endowment fund corpus means an amount equal to the endowment challenge grant or grants awarded under this part plus matching funds provided by the institution equal to the amount of the grant or grants.

Endowment fund income means an amount equal to the total value of the endowment fund established under the grant minus the endowment fund corpus.

Institution of higher education means an institution of higher education as defined in section 1201 of the Higher Education Act as modified by sections 312 and 322 of the HEA.

Quasi-endowment fund means a fund which the governing board of an institution or foundation establishes to function as an endowment in that the principal is to be retained and invested. However, the entire principal and income may be spent at any time at the discretion of the governing board.

(Authority: 20 U.S.C. 1065a)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987; 52 FR 36375, Sept. 28, 1987]

Subpart B—What Type of Grant Does the Secretary Award Under the Endowment Challenge Grant Program?

§ 628.10 What are the characteristics of an endowment challenge grant?

(a) Each endowment challenge grant awarded by the Secretary under this part—

(1) Except as provided in paragraph (b) of this section—

(i) Ranges from $50,000 to $250,000 in fiscal year 1987 and from $50,000 to $500,000 in subsequent fiscal years; and

(ii) Must be matched on a dollar-for-dollar basis;

(2) Must be invested by the institution; and

(3) Covers a period of 20 years.

(b) When funds appropriated for a fiscal year for the Endowment Challenge Grant Program exceed $10,000,000, the Secretary may award an endowment challenge grant to an institution in excess of $1,000,000, which may be matched with one dollar of matching funds for every two dollars of grant funds, if the institution—

(1) Requests an endowment challenge grant in excess of $1,000,000; and

(2) Deposits, in its endowment fund established under this part, matching funds equal to one-half of the amount of the grant.

(Authority: 20 U.S.C. 1065a)

[52 FR 11258, Apr. 8, 1987]

Subpart C—How Does an Eligible Institution Apply for an Endowment Challenge Grant?

§ 628.20 What shall an applicant include in an application for an endowment challenge grant?

An applicant shall state in its application the amount of the endowment challenge grant it is requesting and shall include information sufficient for the Secretary to—

(a) Evaluate the application under the selection criteria set forth in § 628.31 and the priorities set forth in § 628.32; and

(b) Determine whether the applicant will administer the endowment challenge grant in accordance with the regulations in this part.

(Authority: 20 U.S.C. 1065a)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987]

Subpart D—How Does the Secretary Award an Endowment Challenge Grant?

§ 628.30 How does the Secretary evaluate an application for an endowment challenge grant?

(a) In evaluating an application for an endowment challenge grant, the Secretary—

(1) Judges the application using the selection criteria in § 628.31 and the priorities in § 628.32;

(2) Gives, for each criterion and priority, a score up to the maximum possible points in parentheses following the description of that criterion or priority; and

(3) Gives up to 130 total points, 90 points maximum for the criteria in § 628.31, and 40 points maximum for the priorities in § 628.32.

(b) In selecting recipients for grants, the Secretary follows the procedures in 34 CFR 75.217(d) and (e) of the Education Department General Administrative Regulations.

(Authority: 20 U.S.C. 1065a)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987]

Editorial Note: Information collection requirements contained in § 628.30 will become effective after approval by the Office of Management and Budget.

§ 628.31 What selection criteria does the Secretary use in evaluating an application for an endowment challenge grant?

In evaluating an application for an endowment challenge grant, the Secretary uses the following three criteria:

(a) The Secretary measures the applicant's past efforts to build or maintain its existing endowment and quasi-endowment funds by the dollar and relative increase in market value to the applicant's existing endowment and quasi-endowment funds over the applicant's four fiscal years preceding the year of application using the formulas set forth in paragraphs (a)(1) through (a)(5) of this section.

(1) In measuring an applicant's dollar increase in its endowment and quasi-endowment funds, the Secretary—

(i) Subtracts from an amount equal to the market value of the applicant's endowment and quasi-endowment funds at the end of the four-year period described in paragraph (a) of this section an amount equal to the market value of the applicant's endowment and quasi-endowment funds at the beginning of that four-year period; and

(ii) Divides the result obtained in paragraph (a)(1)(i) of this section by the applicant's full-time equivalent enrollment at the end of the four-year period.

(2) The Secretary awards points on a sliding scale giving 10 points to applicants with the highest dollar increase as calculated in paragraph (a)(1) of this section and no points to applicants with the lowest dollar increase.

(3) In measuring an applicant's relative increase in market value of its endowment and quasi-endowment funds, the Secretary—

(i) Divides an amount equal to the market value of the applicant's endowment and quasi-endowment funds at the beginning of the four-year period described in paragraph (a) of this section by the applicant's full-time equivalent enrollment at the end of the four-year period.

(ii) Adds $50 to the amount obtained in paragraph (a)(3)(i) of this section.

(iii) Divides the result obtained in paragraph (a)(1)(ii) of this section by the amount obtained in paragraph (a)(3)(ii) of this section.

(4)(i) If the amount of endowment per full-time equivalent student under paragraph (a)(3)(i) of this section is $50 or more, the Secretary awards points on a sliding scale giving 15 points to applicants with a relative increase of 100 percent or more and no points to applicants that have had a relative decrease of more than 20 percent.

(ii) If the amount of endowment per full-time equivalent student under paragraph (a)(3)(i) of this section is less than $50, the Secretary awards points on a sliding scale giving 15 points to applicants with a relative increase of 100 percent or more and no points to applicants that have had no relative increase.

(5) In measuring the applicant's past effort, the Secretary—

(i) Excludes real estate from being considered as part of the applicant's existing endowment or quasi-endowment fund; and

(ii) Includes an endowment or quasi-endowment fund operated by a foundation if the foundation is tax-exempt and was established for the purpose of raising money for the institution.

(b) The Secretary considers the degree of proposed nongovernmental matching funds. (Total: 15 points maximum for the highest proposed percentage)

(1) The Secretary measures the degree to which an applicant proposes to match the grant with funds from sources other than a State or local government—giving up to 15 points to applicants proposing to obtain the largest percentage of matching funds from those nongovermental sources.

(2) If an applicant is applying for an endowment challenge grant for the first time, the Secretary multiplies the maximum number of points (i.e., 15 points) on this criterion times the following fraction:

$$\frac{\text{Amount of matching funds proposed from nongovernmental sources}}{\text{Total proposed amount of matching funds}}$$

(3) If an applicant has previously received an endowment challenge grant, the Secretary uses the following formula in awarding points under this criterion:

$$\frac{\text{Amount of matching funds proposed from nongovernmental sources}}{\text{Total proposed amount of matching funds}} \times \frac{\text{Amount of matching funds from nongovernmental sources actually raised under previous endowment challenge grant}}{\text{Amount of matching funds proposed to be raised from nongovernmental sources under the previous endowment challenge grant}} \times 15 \text{ points} = \text{Points on this criterion}$$

(c) The Secretary considers the need for an endowment challenge grant as measured by the applicant's lack of resources.

(1) The Secretary gives up to 50 points to applicants with the least resources as measured, at the end of the applicant's fiscal year preceding the year it applies for an endowment challenge grant, by revenue per full-time equivalent student it receives from the sum of the following—

(i) Federal, State and local government appropriations;

(ii) Unrestricted Federal, State and local government grants and contracts;

(iii) Eighty percent of tuition and fees; and

(iv) Unrestricted and restricted "endowment income".

(2) In measuring the applicant's resources, the Secretary—

(i) Defines the factors in paragraphs (c)(1)(i) through (iv) as they are defined in the Education Department Higher Education General Information Survey of Financial Statistics.

(ii) Excludes real estate from being considered as part of the applicant's existing endowment or quasi-endowment fund.

(Approved by the Office of Management and Budget under control number 1840-0531)

(Authority: 20 U.S.C. 1065a)

[49 FR 28521, July 12, 1984, as amended at 49 FR 37325, Sept. 21, 1984]

§ 628.32 What funding priorities does the Secretary use in evaluating an application for an endowment challenge grant?

In evaluating an endowment challenge grant application, the Secretary uses the following two priorities:

(a) *Recipient of Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, or Special Needs Program grant.* (Total: 20 points) The Secretary gives 20 points to each applicant that, on October 1 of the fiscal year in which the applicant is applying for an endowment challenge grant, is a recipient of a development or planning grant under the Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, or Special Needs Program.

(b) *Need for an endowment challenge grant as measured by the lack of endowment funds.* (Total: 20 points)

(1) The Secretary gives up to 20 total points to an applicant with the greatest need for an endowment challenge grant under this part, as measured by the applicant's lack of endowment funds.

(2) The Secretary gives up to 20 points to the applicant with the lowest market value, at the end of the applicant's fiscal year preceding the year it applies for an endowment challenge grant, of its existing endowment and quasi-endowment fund in relation to the number of full-time equivalent students enrolled at the institution in the fall of the year preceding the year it applies for an endowment challenge grant.

(3) In measuring the applicant's need for an endowment challenge grant, the Secretary excludes real estate from being considered as part of the applicant's existing endowment or quasi-endowment fund.

(Authority: 20 U.S.C. 1065a)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987]

EDITORIAL NOTE: Information collection requirements contained in § 628.32 will become effective after approval by the Office of Management and Budget.

Subpart E—What Conditions Must a Grantee Meet Under the Endowment Challenge Grant Program?

§ 628.40 What are the restrictions on the amount of an endowment challenge grant?

(a) For endowment challenge grants of up to $500,000—

(1) An institution must raise at least $50,000 in matching funds and qualify for at least a $50,000 grant under paragraph (c) of this section; and

(2) If an institution obtains at least $50,000 in matching funds and raises all the nongovernmental funds it proposes to raise in its application, the institution may receive a grant equal to the amount of matching funds it raised up to a maximum of $250,000 in fiscal year 1987 and $500,000 in subsequent fiscal years.

(b) For endowment challenge grants in excess of $1,000,000—

(1) An institution must raise at least $500,001 in matching funds and qualify for at least a $1,000,001 grant under paragraph (c) of this section; and

(2) If an institution obtains at least $500,001 in matching funds and raises all the nongovernmental funds it proposes to raise in its application, the institution may receive a grant equal to double the amount of matching funds it raised.

(c) If an institution does not raise all the nongovernmental funds it proposed to raise in its application, the Secretary reduces its maximum grant by multiplying the grant amount requested by the following fraction:

Amount of matching funds raised from nongovernmental funds
Amount of matching funds proposed to be raised from nongovernmental funds.

(Authority: 20 U.S.C. 1065a)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987]

§ 628.41 What are the obligations of an institution that the Secretary selects to receive an endowment challenge grant?

(a) An institution that the Secretary selects to receive an endowment challenge grant shall—

(1) Enter into an agreement with the Secretary to administer the endowment challenge grant;

(2) Establish an endowment fund independent of any other endowment fund established by or for that institution;

(3) Deposit its matching funds in the endowment fund established under this part;

(4) Upon receipt, immediately deposit the grant funds into the endowment fund established under this part; and

(5) Within fifteen working days after receiving the grant funds, invest the endowment fund corpus.

(b) Before the Secretary disburses grant funds and not later than a date established by the Secretary through a notice in the FEDERAL REGISTER (which date may not be later than the earlier of the last day of availability of appropriations or eighteen months after an institution has been notified that it has been selected to receive a grant), an institution shall—

(1) Match, with cash or low-risk securities, the endowment challenge grant funds to be received under this part;

(2) Certify to the Secretary—

(i) The source, kind and amount of the eligible matching funds;

(ii) That the matching funds are eligible under paragraph (b)(1) of this section and § 628.42; and

(3) Have a certified public accountant or other licensed public accountant, who is not an employee of the institution, certify that the data contained in the application is accurate.

(c)(1) For the purpose of paragraph (b)(1) of this section, "cash" may include cash on hand, certificates of deposit and money market funds; and

(2) A negotiable security, to be considered as part of the institution's match—

(i) Must be low-risk as required in § 628.43; and

(ii) Must be assessed at its market value as of the end of the trading day on the date the institution deposits the security into the endowment fund established under this part.

(Approved by the Office of Management and Budget under control number 1840-0564)

(Authority: 20 U.S.C. 1065a)

[49 FR 28521, July 21, 1984, as amended at 49 FR 37325, Sept. 21, 1984; 52 FR 11258, Apr. 8, 1987; 53 FR 49146, Dec. 6, 1988]

§ 628.42 What may a grantee not use to match an endowment challenge grant?

To match an endowment challenge grant, a grantee may not use—

(a) A pledge of funds or securities;

(b) Deferred gifts such as a charitable remainder annuity trust or unitrust;

(c) Any Federal funds;

(d) Any borrowed funds; or

(e) The corpus or income of an endowment fund or quasi-endowment fund existing at the closing date established by the Secretary for submission of eligibility requests under the Endowment Challenge Grant Program. This includes the corpus or income of an endowment or quasi-endowment fund established by a foundation if the foundation is tax-exempt and was established for the purpose of raising money for the institution.

(Authority: 20 U.S.C. 1065a)

§ 628.43 What investment standards shall a grantee follow?

(a) A grantee shall invest, for the duration of the grant period, the endowment fund established under this part in savings accounts or in low-risk securities in which a regulated insurance company may invest under the law of the State in which the institution is located.

(b) When investing the endowment fund, the grantee shall exercise the judgment and care, under the circumstances, that a person of prudence, discretion and intelligence would exercise in the management of his or her own financial affairs.

(c) An institution may invest its endowment fund in savings accounts permitted under paragraph (a) of this section such as—

(1) A federally insured bank savings account;

(2) A comparable interest bearing account offered by a bank; or

(3) A money market fund.

(d) An institution may invest its endowment fund in low-risk securities permitted under paragraph (a) of this section such as—

(1) Certificates of deposit;

(2) Mutual funds;

(3) Stocks; or

(4) Bonds.

(e) An institution may not invest its endowment fund in real estate.

(Authority: 20 U.S.C. 1065a)

§ 628.44 When and for what purposes may a grantee use the endowment fund corpus?

(a)(1) During the grant period, a grantee may not withdraw or spend any part of the endowment fund corpus.

(2) If, during the grant period, a grantee withdraws or spends all or part of the endowment fund corpus, it must repay to the Secretary an amount equal of 50 percent of the amount withdrawn or spent plus the income earned on that amount.

(b) At the end of the grant period, the institution may use the endowment fund corpus for any educational purpose.

(Authority: 20 U.S.C. 1065a)

§ 628.45 How much endowment fund income may a grantee use and for what purposes?

(a) During the endowment challenge grant period, a grantee—

(1) May withdraw and spend up to 50 percent of the total aggregate endowment fund income earned prior to the date of expenditure;

(2) May spend the endowment fund income for—

(i) Costs necessary to operate the institution, including general operating and maintenance costs;

(ii) Costs to administer and manage the endowment fund; and

(iii) Costs associated with buying and selling securities, such as stockbroker commissions and fees to "load" mutual funds;

(3) May not use endowment fund income for—

(i) A school or department of divinity or any religious worship or sectarian activity;

(ii) An activity that is inconsistent with a State plan for desegregation of higher education applicable to the grantee; or

(iii) An activity that is inconsistent with a State plan of higher education applicable to the grantee; and

(4) May not withdraw or spend the remaining 50 percent of the endowment fund income.

(b) Notwithstanding paragraph (a)(1) of this section, the Secretary may permit a grantee that requests to spend more than 50 percent of the total aggregate endowment fund income to do so if the grantee demonstrates that the expenditure is necessary because of—

(1) A financial emergency such as a pending insolvency or temporary liquidity problem;

(2) A situation threatening the existence of the institution such as destruction due to a natural disaster or arson; or

(3) Another unusual occurrence or demanding circumstance, such as a judgment against the institution for which the institution would be liable.

(c) If, during the grant period, a grantee spends more endowment fund income or uses it for purposes other than permitted under paragraphs (a) or (b) of this section, it shall repay to the Secretary an amount equal to 50 percent of the amount improperly spent.

(d) At the end of the grant period, the institution may use all of the endowment fund income for any educational purpose.

(Authority: 20 U.S.C. 1065a and 1069b)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987]

§ 628.46 How shall a grantee calculate the amount of endowment fund income that it may withdraw and spend?

A grantee shall calculate the amount of endowment fund income that it may withdraw and spend at a particular time as follows:

(a) On each date that the grantee plans a withdrawal of income, it must—

(1) Determine the value of endowment fund income by subtracting the endowment fund corpus from the current total value of the endowment fund on that date; and

(2) Calculate the amount of endowment fund income previously withdrawn from the endowment fund.

(b) If the value of endowment fund income in the endowment fund exceeds the aggregate amount of previously withdrawn endowment fund income, the grantee may withdraw and spend up to 50 percent of that excess fund income.

(Authority: 20 U.S.C. 1065a)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987]

§ 628.47 What shall a grantee record and report?

A grantee shall—

(a) Keep records of—

(1) The source, kind and amount of matching funds;

(2) The type and amount of investments of the endowment fund;

(3) The amount of endowment fund income; and

(4) The amount and purpose of expenditures of endowment fund income;

(b) Retain each year's records for a minimum of five years after the grant period ends;

(c) Allow the Secretary access to information that the Secretary judges necessary to audit or examine the records required in paragraph (a) of this section;

(d) Carry out the audit required in 34 CFR 74.61(h) or 74.62, as applicable;

(e) Provide to the Secretary a copy of the external or internal audit to be performed under 34 CFR 74.61(h) or 74.62, as applicable; and

(f) Submit reports on a timely basis that are requested by the Secretary.

(Approved by the Office of Management and Budget under control number 1840-0564)

(Authority: 20 U.S.C. 1065a; 1232f)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987; 53 FR 49146, Dec. 6, 1988]

EDITORIAL NOTE: Information collection requirements contained in § 628.47 will become effective after approval by the Office of Management and Budget.

§ 628.48 What happens if a grantee fails to administer the endowment challenge grant in accordance with applicable regulations?

(a) The Secretary may, after giving the grantee notice and an opportunity for a hearing, terminate an endowment challenge grant if the grantee—

(1) Withdraws or spends any part of the endowment fund corpus in violation of § 628.44(a)(1);

(2) Spends any portion of the endowment fund income not permitted to be spent in § 628.45;

(3) Fails to invest the endowment fund in accordance with the investment standards set forth in § 628.43; or

(4) Fails to meet the requirements in § 628.41.

(b) If the Secretary terminates a grant under paragraph (a) of this section, the grantee must return to the Secretary an amount equal to the sum of the original endowment challenge grant or grants plus the income earned on that sum.

(Authority: 20 U.S.C. 1065a)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987; 52 FR 36375, Sept. 28, 1987]

PART 629—VETERANS EDUCATION OUTREACH PROGRAM

Subpart A—General

Sec.
629.1 What is the Veterans Education Outreach Program?
629.2 Who is eligible for an award?
629.3 What definitions apply?
629.4 What regulations apply?

Sec.
629.5 What activities may a grantee support with VEOP funds.

Subpart B—How Does an Eligible Institution Apply for an Award?

629.10 What are the application requirements?

Subpart C—How Does the Secretary Make an Award?

629.20 How does the Secretary calculate the amount of the award?

Subpart D—What Conditions Must a Grantee Meet?

629.30 How must a grantee use its award?
629.31 What are the matching requirements?
629.32 When must a grantee submit a proposed budget?

AUTHORITY: 20 U.S.C. 1070e-1, unless otherwise noted.

SOURCE: 52 FR 29824, Aug. 11, 1987, unless otherwise noted.

Subpart A—General

§ 629.1 What is the Veterans Education Outreach Program?

The Veterans Education Outreach Program (VEOP) provides Federal financial assistance to institutions of higher education to provide certain services to veterans.

(Authority: 20 U.S.C. 1070e-1)

§ 629.2 Who is eligible for an award?

An institution of higher education, or any branch thereof which is located in a different community from that in which the parent institution is located, is eligible to receive an award if the institution or branch has—

(a) At least 100 veterans with honorable discharges in attendance as undergraduate students on April 16 of the current year; or

(b) Received an award under the Veterans Cost-of-Instruction Payments (VCIP) Program for a continuous period of three of the five most recent fiscal years ending on or before September 30, 1985.

(Authority: 20 U.S.C. 1070e-1)

§ 629.3 What definitions apply?

The following definitions apply to the regulations in this part:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Grantee
Secretary
State

(b) *Other definitions that apply to this part.* The following additional definitions apply to this part:

Academic year means a period beginning on July 1 and ending the following June 30.

Counseling means professional consultation on educational, vocational, personal, or family problems.

Disabled veteran means a veteran who—

(1) Is entitled to compensation, or who but for the receipt of military retired pay would be entitled to compensation, under laws administered by the Veterans' Administation;

(2) Was discharged or released from active duty because of a service-connected disability; or

(3) Has been certified by a physician as having a disability.

Full-time student means a student who is enrolled for the equivalent of not less than 12 semester hours and is being charged for tuition on the basis of the institution's full-time fee schedule.

Institution of higher education is defined in section 1201(a) of the Higher Education Act of 1965, as amended.

Instructional expenses in academically related programs means the funds expended by an instructional department of an institution of higher education for salaries, office expenses, equipment, and research.

Outreach means a coordinated, community-wide program of reaching veterans to encourage enrollment in, and completion of, postsecondary education, with special emphasis on educationally disadvantaged veterans, service-connected disabled veterans, other disabled or handicapped veterans, and incarcerated veterans within the institution's service area, including activities to determine their needs and to make appropriate referral and follow-up arrangements with relevant service agencies, as needed to encourage such enrollment and completion.

Recruitment means a concerted effort to enroll veterans in postsecondary training programs available at the institution or elsewhere.

Special education programs means remedial, tutorial, and motivational programs designed to promote success in postsecondary education.

Student means a person in attendance at an institution of higher education.

Undergraduate student means a student who is enrolled in an undergraduate course of study at an institution of higher education and has not been awarded a baccalaureate or first professional degree.

Veteran means a person who—

(1) Served on active duty in the Armed Forces for a continuous period of more than 180 days and was discharged or released with other than a dishonorable discharge;

(2) Was discharged or released from active duty in the Armed Forces because of a service-connected disability; or

(3) Is receiving or is eligible to receive benefits under 38 U.S.C. Chapter 30.

(Authority: 20 U.S.C. 1070e-1, 1088)

§ 629.4 What regulations apply?

The following regulations apply to the Veterans Education Outreach Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that apply to Department Regulations).

(4) 34 CFR Part 78 (Education Appeal Board).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 629.

(Authority: 20 U.S.C. 1070e-1, 1088)

[52 FR 29824, Aug. 11, 1987, as amended at 55 FR 21715, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21715, May 25, 1990, § 629.4 was amended by adding paragraph (a)(5), effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 629.5 What activities may a grantee support with VEOP funds?

(a) Except as provided in § 629.30(b)(2), a grantee may use VEOP funds only for the following activities:

(1) Maintaining an office of veterans' affairs which has responsibility for veterans' outreach, recruitment, special education programs, and the provision of educational, vocational, and personal counseling to veterans.

(2) Carrying out programs designed to prepare educationally disadvantaged veterans for postsecondary education for which they are receiving benefits under 38 U.S.C. Chapter 34, Subchapter V.

(3) Carrying out active outreach (with special emphasis on service-connected disabled veterans, other disabled or handicapped veterans, incarcerated veterans, and educationally disadvantaged veterans), recruiting, and counseling activities, through the use of funds available under federally assisted work-study programs (with special emphasis on the veteran-student services program under 38 U.S.C. 1685).

(4) Carrying out an active tutorial assistance program for veterans, including disseminating information regarding the program, with special emphasis on making maximum use of the benefits available under 38 U.S.C. 1692.

(5) Assisting in the readjustment, rehabilitation, personal counseling, and employment needs of veterans.

(6) Coordinating activities carried out under this part with the Veterans Administration's—

(i) Readjustment counseling program authorized under 38 U.S.C. 612A; and

(ii) Programs of veterans employment and training authorized under the Job Training Partnership Act and under 38 U.S.C. Chapters 41 and 42.

(7) After the institution has carried out the activities described in paragraphs (a)(1)-(6) of this section, defraying instructional expenses in academically related programs.

(b) An institution may not use VEOP funds for a school or department of divinity or for any religious worship or sectarian activity.

(c) A grantee may use VEOP funds to pay travel expenditures only if the travel expenditures are incurred in connection with recruitment and outreach activities, or attendance at Department-sponsored meetings providing technical assistance or Department-approved professional meetings.

(Authority: 20 U.S.C. 1070e-1)

Subpart B—How Does an Eligible Institution Apply for an Award?

§ 629.10 What are the application requirements?

(a) An institution applying for funds under this part must submit an application in the form prescribed by the Secretary.

(b) Each application must contain the following:

(1) Information that shows the institution is eligible for an award under this part.

(2) Information necessary for the Secretary to determine the amount of the payment to which the applicant would be entitled.

(3) An assurance that the institution, during the fiscal year for which payment is sought, will expend the amounts required under § 629.31.

(4) Plans, policies, assurances, and procedures to ensure that the institution will—

(i) Make an adequate effort to carry out the activities described in § 629.5(a)(1) through (6); and

(ii) Use any awarded funds remaining, after the institution has carried out the activities described in § 629.5(a) (1) through (6), solely to defray instructional expenses in its academically related programs.

(5) An assurance that the institution will not use VEOP funds for a school or department of divinity or for any religious worship or sectarian activity.

(6) An assurance that the institution will submit to the Secretary the reports required by § 629.32.

(Approved by the Office of Management and Budget under control number 1840-0054)

(Authority: 20 U.S.C. 1070e-1)

Subpart C—How Does the Secretary Make an Award?

§ 629.20 How does the Secretary calculate the amount of the award?

(a) Except as otherwise provided in this section, for each veteran who is in attendance as a full-time undergraduate student, the Secretary pays to each eligible applicant the following:

(1) $300 for each veteran who is receiving—

(i) Vocational rehabilitation under 38 U.S.C. Chapter 31; or

(ii) Educational assistance under 38 U.S.C. Chapter 34.

(2) $150 for each veteran who—

(i) Has been the recipient of educational assistance under 38 U.S.C. Chapter 34, Subchapter V;

(ii) Has a service-connected disability as defined in 38 U.S.C. 101(16); or

(iii) Is a disabled veteran as defined in § 629.3.

(3) $100 for each veteran other than those listed in paragraphs (a)(1) and (a)(2) of this section, who has received an honorable discharge from military service but who is no longer eligible to, or does not, receive educational benefits under 38 U.S.C. Chapter 31 or 34.

(b) The Secretary reduces the amount of payment awarded for each veteran attending the institution on a less than full-time basis in proportion to the degree to which that person is attending on a less than full-time basis.

(c) The total payment that the Secretary makes in any fiscal year to an institution, or to an eligible branch thereof, is at least $1,000 but does not exceed $75,000.

(d) The Secretary apportions funds which become available as a result of the limitation on payments described in paragraph (c) of this section so that all grantees under this part receive—

(1) A payment of $9,000 or the amount to which it is entitled under paragraphs (a) and (b) of this section for that fiscal year (but not less than $1,000), whichever is lesser; and

(2) Additional amounts up to the $75,000 maximum for each eligible institution or eligible branch thereof.

(e) If the amount appropriated for any fiscal year is not sufficient to make payments in the amounts to which all applicants are entitled, the Secretary ratably reduces those payments. If any amounts become available for a fiscal year after such reductions have been imposed, the Secretary increases the reduced payments on the same basis as they were decreased.

(Authority: 20 U.S.C. 1070e-1)

Subpart D—What Conditions Must a Grantee Meet?

§ 629.30 How must a grantee use its award?

(a) Except as provided in paragraph (b) of this section, a grantee shall use—

(1) At least 90 percent of the amount it receives under this part, or the amount of funds needed to carry out the activities described in § 629.5(a)(1), whichever is greater, to carry out those activities;

(2) Any remaining awarded funds subject to this 90 percent limitation to carry out the activities described in § 629.5(a) (2) through (6); and

(3) Any remaining awarded funds—

(i) First, to carry out the activities described in § 629.5(a) (2) through (6); and

(ii) Then, to defray instructional expenses in its academically related programs.

(b)(1) The Secretary may waive the expenditure requirements of paragraphs (a) (1) and (2) of this section if he determines that the grantee is capable of adequately carrying out the activities described in § 629.5(a) (1) through (6) using less than 90 percent of its award. An institution that receives such a waiver may use any awarded funds remaining after carrying out the activities described in § 629.5(a) (1) through (6) to defray instructional expenses in its academically related programs, subject to any limitations imposed by the Secretary.

(2) In making the determination described in paragraph (b)(1) of this section, the Secretary may consider all aspects of the institution's programs for veterans, including, but not limited to the following:

(i) *Administration.* (A) Adequate identification of the veteran population in the institution's service area and adequate assessment of its needs related to postsecondary education;

(B) The employment of an adequate number of qualified staff members to support veterans' activities and services;

(C) The provision of adequate, prominently located, and accessible housing for the institution's office of veterans' affairs, in light of the institution's veteran student enrollment and physical environment; and

(D) The coordination of veterans' services with other campus services available to veterans, such as admissions, student financial assistance, counseling, job placement, and programs carried out by the Veterans Administration pursuant to 38 U.S.C.

(ii) *Outreach.* The establishment and maintenance of—

(A) Contact with veterans in the institution's service area;

(B) An effective procedure for assessing veterans' needs, problems, and interests related to postsecondary education; and

(C) An effective referral service involving agencies providing assistance in areas such as housing, employment, health, recreation, vocational and technical training, and financial assistance as such services are related to encouraging the pursuit of postsecondary education.

(iii) *Recruitment.* The establishment and maintenance of procedures for bringing veterans into programs of postsecondary education most suited to their educational and career aspirations, including such techniques as publications, use of mass media, and personal contacts.

(iv) *Special Education Programs.* The establishment and maintenance of support from appropriate departments of the institution for special remedial, motivational, and tutorial programs for veteran students.

(v) *Counseling.* The establishment and maintenance of ready access by veteran students to professional assistance and consultation on personal, family, educational, and career problems.

(c) If an institution cannot carry out all of the activities described in § 629.5(a) (1) through (6) due to limited veteran enrollment, the Secretary may permit one or more of the required activities to be carried out through a consortium agreement with one or more institutions of higher education.

(d) An award made in any fiscal year remains available for expenditure by the grantee for up to two academic years.

(Authority: 20 U.S.C. 1070e-1)

§ 629.31 What are the matching requirements?

(a) During the fiscal year for which it receives an award, a grantee shall expend from non-Federal sources—

(1) For all academically related programs of the institution, an amount at least as great as the average amount it expended for such programs during the three years preceding the grant year; and

(2) For the activities described in § 629.5(a), an amount at least as great as the amount of the grant.

(b) The Secretary applies the rules in 34 CFR Part 74, Subpart G, in assessing an institution's compliance with paragraph (a)(2) of this section.

(Authority: 20 U.S.C. 1070e-1)

§ 629.32 When must a grantee submit a proposed budget?

The grantee shall submit a proposed budget for the use of the funds it is awarded in any fiscal year under this program to the Secretary within 90 days of receipt of notice of its award.

(Approved by the Office of Management and Budget under control number 1840-0054)

(Authority: 20 U.S.C. 1070e-1)

PART 630—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

Subpart A—General

Sec.
630.1 Fund for the Improvement of Postsecondary Education.
630.2 Eligible parties.
630.3 Types of awards.
630.4 Regulations that apply to this program.
630.5 Definitions that apply to this program.

Subpart B—Projects the Secretary Assists under This Program

630.11 Types of competition.
630.12 Annual priorities.

Subpart C—How to Apply for Assistance

630.21 Annual announcement.

Subpart D—How the Secretary Makes an Award

630.31 How the Secretary evaluates an application.
630.32 Selection criteria.
630.33 State comment.
630.34 Board approval.
630.35 Other information or materials.

AUTHORITY: 20 U.S.C. 1135-1135a-2, 1135e-1135e-1, unless otherwise noted.

SOURCE: 47 FR 15552, Apr. 9, 1982, unless otherwise noted.

Subpart A—General

§ 630.1 Fund for the Improvement of Postsecondary Education.

The purpose of the Fund is to assist educational institutions and agencies in improving postsecondary educational opportunities.

(Authority: 20 U.S.C. 1135)

§ 630.2 Eligible parties.

Institutions of postsecondary education, a combination of institutions of postsecondary education, and other public and private educational institutions and agencies are eligible to receive an award.

(Authority: 20 U.S.C. 1135)

§ 630.3 Types of awards.

(a) The Secretary awards grants and cooperative agreements under this program based on the evaluation procedures established.

(b) The Secretary does not make grants to an educational institution or agency other than a nonprofit or public institution or agency.

(c) The Secretary will incorporate additional conditions into each cooperative agreement awarded relating to the substantial involvement of the Government in the project.

(Authority: 20 U.S.C. 1135, 1135a-2, 3474; 41 U.S.C. 505)

§ 630.4 Regulations that apply to this program.

(a) The following regulations apply to applicants for and recipients of grants and cooperative agreements under this part:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities)

(2) The regulations in this Part 630.

(b) The following provisions of EDGAR do not apply to this program:

(1) Section 75.201(a) (unweighted selection criteria);

(2) Section 75.202 through 75.206 (selection criteria); and

(3) Section 75.217(a)(2) (three or more persons to review applications).

(Authority: 20 U.S.C. 1135, 1135a-2, 3474; 41 U.S.C. 505)

[47 FR 15552, Apr. 9, 1982, as amended at 55 FR 21715, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21715, May 25, 1990, § 630.4(a)(1) was amended by removing the word "and", and adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence, effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 630.5 Definitions that apply to this program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant.
Application.
Award.
Department.
EDGAR.
Grant.
Nonprofit.
Preapplication.
Private.
Project.
Public.
Secretary.

(b) *Definitions that apply to this part:* The following definitions apply to this part:

Combination of institutions of postsecondary education means a group of institutions of postsecondary education that have entered into a joint arrangement for the purpose of carrying out a common objective, or a public or nonprofit private agency, organization, or institution designated or created by a group of institutions of postsecondary education for the purpose of carrying out a common objective on their behalf.

Community service means planned, supervised service designed to improve the quality of life for community residents, particularly for low-income people, or to assist in the solution of particular problems related to their needs, including, but not limited to, health care, child care, literacy, education (including tutorial services), vocational rehabilitation and training, social services, legal services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, and rural development. This term does not include partisan or non-partisan political activity, lobbying, direct solicitation of donations, religious proselytizing, conduct of religious services or instruction, pro-union or anti-union activity, or activities that result in the displacement of employed workers or impair existing contracts for service.

Cooperative agreement means an assistance relationship in which substantial Federal involvement is anticipated.

Educational institution or agency means an entity that is either engaged in activities involving education or has jurisdiction over educational matters pursuant to State or local law.

Fund means the Fund for the Improvement of Postsecondary Education, the unit within the Department that administers the program covered by this part.

Institution of higher education means an institution that meets the definition of that term found in section 1210(a) of the Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1135, 1135e, 1135e-1, 1141)

[47 FR 15552, Apr. 9, 1982, as amended at 52 FR 27523, July 21, 1987]

Subpart B—Projects the Secretary Assists Under This Program

§ 630.11 Types of competitions.

The Secretary accepts applications for assistance in two program competition categories described in this section. Each year the Secretary announces, as described in § 630.21, the types of competitions to be conducted and the information required for submitting and reviewing preapplications, when applicable. (See EDGAR §§ 75.130 through 75.134)

(a) *The Comprehensive Program Competition.* In this competition, the Secretary supports a broad range of projects that respond to immediate problems or issues in a variety of categories and that seek to improve postsecondary educational opportunities. The Secretary requires the submission of preapplications by applicants under this competition.

(b) *Targeted Competitions.* In these competitions, the Secretary focuses on one or several problem areas or improvement approaches in postsecondary education. Preapplications may be required of applicants under these competitions. The targeted competitions may include, for example—

(1) Special Focus competitions, in which the Secretary supports projects addressing a particular problem area or improvement approach in postsecondary education;

(2) National Project competitions, in which the Secretary supports projects addressing a particular problem area or improvement approach in postsecondary education. Grantees under National Project competitions shall collaborate in disseminating project results;

(3) Network competitions, in which the Secretary supports projects that bring together educational practitioners in a particular area of concern in a continuing association to improve practice in that area;

(4) Final Year Dissemination competitions, in which the Secretary supports efforts by grantees of the Fund to disseminate project ideas and results. Applicants in these competitions are limited to grantees of the Fund whose projects are in their final year of funding, except that a recipient of a single-year grant may apply for assistance under this competition within one year following the termination of its project; or

(5) Practitioner Scholars competitions, in which the Secretary supports efforts by postsecondary educational practitioners to contribute to knowledge about postsecondary education or to the improvement of postsecondary education by producing a document or other product or by engaging in an activity designed to share the practitioner's knowledge with others.

(c) *Innovative projects for student community service competition.* In this competition the Secretary supports innovative projects designed to encourage students to participate in community service programs in exchange for educational services or financial assistance in order to reduce the debt burden that has been or would otherwise be incurred by those students for attendance at institutions of higher education.

(Authority: 20 U.S.C. 1135, 1135e)

[47 FR 15552, Apr. 9, 1982, as amended at 52 FR 27523, July 21, 1987]

§ 630.12 Annual priorities.

(a) Each year the Secretary announces, as described in § 630.21, the program priorities applicable to each competition to be conducted that year and the method that will be used in applying the selected priorities.

(b) Program priorities describe problem areas or improvement approaches in postsecondary education and may include, for example—

(1) Increasing the availability of high quality programs for all postsecondary students by developing educational programs and services that allow currently enrolled students from groups previously excluded from postsecondary educational participation to complete their educational goals;

(2) Expanding professional education and employment for racial or ethnic minorities and women by increasing access to postsecondary educational institutions at the graduate level and by increasing employment opportunities within postsecondary educational institutions for these populations;

(3) Expanding learning opportunities for the full-time worker by developing new educational programs and services for workers;

(4) Increasing the use of active modes of learning by using educational processes, such as internships, self-directed learning, learning groups, and interactive electronic technologies, that allow learners to take greater responsibility for their own learning;

(5) Enhancing the knowledge and abilities of postsecondary students by developing new or redefined curricular content and educational subject matters; and

(6) Improving leadership for new educational circumstances by encouraging efforts to renew and implement the educational missions of individual institutions or systems of institutions and to improve the management of postsecondary educational institutions;

(7) Establishing institutions and programs using the technology of communications;

(8) Improving graduate education, the instruction of academic professions, and the recruitment and retention of faculties; and

(9) Creating new institutions and programs for examining and awarding credentials to individuals, and reforming current institutional practices related to credentials.

(c) Under the Comprehensive
gram competition, projects that do
address a priority are eligible for
port if they address other signifi
problems in postsecondary educati

(Authority: 20 U.S.C. 1135, 1135a-2, 347

Subpart C—How To Apply for Assistance

§ 630.21 Annual announcement.

Each year the Secretary annou
in one or more application not
published in the Federal Regis
the following:

(a) The types of competitions t
conducted (see § 630.11).

(b) Those competitions requi
preapplications and information a
the submission and review of prea
cations (see § 630.11).

(c) Program priorities selected
each competition and the meth
that will be used in applying the
lected priorities (see § 630.12).

(d) Selection criteria applicable
each competition and the meth
that will be used in applying these
teria (see § 630.32).

(e) Those competitions in wh
other information or additional m
rials may be requested or required
applicants after applications h
been submitted, and the kind of inf
mation or additional materials to
requested or required (see § 630.34).

(Authority: 20 U.S.C. 1135, 1135a-2, 3474)

Subpart D—How the Secretary Ma an Award

§ 630.31 How the Secretary evaluates application.

On the basis of the applicable sel
tion criteria in § 630.32, the Secreta
evaluates a preapplication or appli
tion. Any comments and recommen
tions received from State commissio
as described in § 630.33, and other
formation requested or additional m
terials requested or required in acco
ance with § 630.34, may also be used
evaluating applications.

(Authority: 20 U.S.C. 1135, 1135a-1, 1135a-
3474)

§ 630.32 Selection criteria.

Each year, in accordance with § 630.21, the Secretary announces the selection criteria that apply to each competition to be conducted that year. The selection criteria will be drawn from the criteria listed in paragraphs (a) through (c) of this section.

Each year, in accordance with § 630.21, the Secretary also announces the methods that the Secretary will use in applying the selection criteria in each competition. In applying the selection criteria, the Secretary first analyzes each application in terms of individual selection criteria, or groups of criteria, which may be given equal importance or ranked according to relative importance. The Secretary then makes a final evaluation based on an overall assessment of the extent to which each application satisfactorily addresses the applicable selection criteria.

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would—

(1) Achieve the purposes of the particular program competition as referenced in § 630.11;

(2) Address the program priorities for the particular program competition;

(3) Address an important problem or need;

(4) Represent an improvement upon, or important departure from, existing practice;

(5) Involve learner-centered improvements;

(6) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(7) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating);

(4) The activities of the project, if funded under a National Project competition, would contribute to a collaboration among other grantees under that competition; and

(5) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of the availability of other funding sources for the proposed activities.

(Authority: 20 U.S.C. 1135, 1135a-2, 3474)

§ 630.33 State comment.

The Secretary does not make an award for a project under the competitions described in §§ 630.11 (a) and (b) to a postsecondary institution applicant until the Secretary has afforded each appropriate State entity having an agreement under section 1203 of the Higher Education Act of 1965, an opportunity to submit its comments and recommendations on the application to the Secretary.

(Authority: 20 U.S.C. 1135a-1)

[47 FR 15552, Apr. 9, 1982, as amended at 52 FR 27523, July 21, 1987]

§ 630.34 Board approval.

The Secretary does not make an award to an applicant under § 630.11(c) until the application is approved by the National Board of the Fund for the Improvement of Postsecondary Education.

(Authority: 20 U.S.C. 1135e-1)

[52 FR 27523, July 21, 1987]

§ 630.35 Other information or materials.

Under some competitions in § 630.11, the Secretary may request other information or request or require additional materials after applications have been submitted. The information or additional materials requested or required are relevant to applicable criteria or priorities and are reviewed to verify or clarify information about projects or applicants in the Secretary's final evaluation of applications having equal merit. The Secretary may request or require interviews, references, or samples of written materials. Each year the Secretary announces, as described in § 630.21, those competitions in which other information may be requested or required, and lists the kind of information or additional materials that may be requested or required.

(Authority: 20 U.S.C. 1135, 1135a-2, 3474)

[47 FR 15552, Apr. 9, 1982. Redesignated at 52 FR 27523, July 21, 1987]

PART 631—COOPERATIVE EDUCATION PROGRAM—GENERAL

Subpart A—General

Sec.

631.1 What is the Cooperative Education Program?
631.2 Who is eligible for an award?
631.3 What kinds of projects may the Secretary fund?
631.4 What regulations apply?
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Sec.

Subpart B—How Does One Apply for an Award?

631.10 What limitations apply to the number of applications that may be submitted?

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631.20 How does the Secretary evaluate applications?

Subpart D—What Conditions Must Be Met after an Award?

631.30 What costs are allowable?
631.31 What costs are unallowable?

AUTHORITY: 20 U.S.C. 1133-1133b, unless otherwise noted.

SOURCE: 52 FR 29140, Aug. 5, 1987, unless otherwise noted.

Subpart A—General

§ 631.1 What is the Cooperative Education Program?

The Cooperative Education Program provides Federal financial assistance to—

(a) Help institutions of higher education offer students paid work experiences closely related to their academic and career pursuits; and

(b) Improve the quality of cooperative education through demonstration, research, and training.

(Authority: 20 U.S.C. 1133a)

§ 631.2 Who is eligible for an award?

Eligibility for each of the four kinds of authorized projects is explained in 34 CFR 632.2, 633.2, 634.2, and 635.2.

(Authority: 20 U.S.C. 1133a, 1133b)

§ 631.3 What kinds of projects may the Secretary fund?

Under the Cooperative Education Program the Secretary awards—

(a) Grants for Administration projects, as described in 34 CFR 632.1;

(b) Grants and contracts for Demonstration projects, as described in 34 CFR 633.1;

(c) Grants and contracts for Research projects, as described in 34 CFR 634.1; and

(d) Grants and contracts for Training and Resource Center projects, as described in 34 CFR 635.1.

(Authority: 20 U.S.C. 1133-1133b)

§ 631.4 What regulations apply?

(a) *Grants.* The following regulations apply to grants under this program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74 (Administration of Grants), 75 (Direct Grant Programs), 77 (Definitions that apply to Department Regulations), 78 (Education Appeal Board), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(2) The regulations in this Part 631.

(3) The regulations in the following parts, as applicable:

(i) 34 CFR Part 632—Cooperative Education Program—Administration Projects.

(ii) 34 CFR Part 633—Cooperative Education Program—Demonstration Projects.

(iii) 34 CFR Part 634—Cooperative Education Program—Research Projects.

(iv) 34 CFR Part 635—Cooperative Education Program—Training and Resource Center Projects.

(b) *Contracts.* The following regulations apply to contracts under this program:

(1) The Federal Acquisition Regulation and the Education Department Acquisition Regulation in Title 48 of the Code of Federal Regulations.

(2) The regulations in this Part 631.

(3) The regulations in the following parts, as applicable:

(i) 34 CFR Part 633—Cooperative Education Program—Demonstration Projects.

(ii) 34 CFR Part 634—Cooperative Education Program—Research Projects.

(iii) 34 CFR Part 635—Cooperative Education Program—Training and Resource Center Projects.

(Authority: 20 U.S.C. 1133)

[52 FR 29140, Aug. 5, 1987, as amended at 55 FR 21715, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21715, May 25, 1990, § 631.4(a)(1) was amended by removing the word "and", and adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence, effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 631.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in 34 CFR Parts 631 through 635 are defined in 34 CFR 77.1:

Applicant
Application
Contract
EDGAR
Equipment
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to terms used in 34 CFR Parts 631 through 635:

Act means the Higher Education Act of 1965, as amended.

Alternating periods of study and employment means alternating academic terms of classroom study and periods of monitored and supervised public or private employment of a cooperative education student.

Combination of institutions of higher education means two or more institutions of higher education that have entered into a cooperative arrangement (consortium) for the purpose of carrying out a common objective.

Cooperative education means a method of education which includes—

(1) Alternating or parallel periods of study and employment;

(2) Formal work experience agreements among the institution of higher education, the student, and the employer;

(3) Work experiences which are of sufficient number and duration, as explained in § 632.30;

(4) Work experiences which are related to the students' academic programs of study or career goals;

(5) Student work experiences which are monitored, supervised and evaluated; and

(6) Student employment which is compensated in conformity with Federal, State, and local laws, unless a waiver for compensation is justified in the application and approved by the Secretary.

Enrolled in a cooperative education project means the status of students who have been accepted into a cooperative education project and will be or have been placed in cooperative education work experiences.

Institution of higher education means an educational institution as defined in section 1201(a) of the Act, but excludes an institution that does not meet the provision of section 1201(a)(3) of the Act.

Institution-wide cooperative education means a comprehensive cooperative education project in an institution of higher education that—

(1) Integrates cooperative education into all or nearly all of the academic disciplines or departments of the institution;

(2) Enrolls in its cooperative education project at least a majority of the institution's students who are eligible for the cooperative education project;

(3) Enables students to participate in work experiences with a variety of employers; and

(4) Acts as a liaison between high schools and the institution's admissions office to inform high school students of the availability and advantages of cooperative education.

Parallel periods of study and employment means periods of both classroom study and monitored and supervised public or private employment of a student in a cooperative education project, with the student carrying a half-time academic course load and working about 20 hours per week in a cooperative education work experience.

Student means a person—

(1) Enrolled in an institution of higher education other than by correspondence;

(2) Enrolled in—

(i) A graduate degree program;

(ii) An undergraduate degree program of not less than two academi years; or

(iii) An undergraduate certificat program of not less than one academi year if the program is provided by a institution of higher education tha offers a two-year program which is acceptable for full credit toward a bachelor's degree; and

(3) Carrying at least one half th academic workload normally require of persons who are full-time degre candidates.

Unit of an institution of higher education.

(1) This term means the organizational entity that has the final, non central administrative authority t recommend or administer the requirements, standards, and credits necessary to earn academic degrees.

(2)(i) In a university, the term means a college or its equivalen within the university.

(ii) In a four-year college, the term means a school or its equivalent withi the college.

(iii) In a two-year college, the term means a department or division whichever is the higher level, withi the college.

(Authority: 20 U.S.C. 1133-1133b)

Subpart B—How Does One Apply fo an Award?

§ 631.10 What limitations apply to th number of applications that may b submitted?

For any single fiscal year, the Secretary accepts from the same applicant no more than one application under each of the four kinds of projects listed in § 631.3.

(Authority: 20 U.S.C. 1133-1133b)

Subpart C—How Does The Secretary Make an Award?

§ 631.20 How does the Secretary evaluate applications?

(a) The Secretary evaluates each kind of application on the basis of the selection criteria set forth in 34 CFR

632.20, 632.21, 633.20, 634.20, and 635.20, as applicable.

(b)(1) The Secretary awards up to 100 points for each set of program selection criteria.

(2) The maximum possible score for each criterion is indicated in parentheses.

(c) The Secretary may assign up to 20 additional points to applications under the Administration Program which address the special consideration factors in § 632.21.

(d) The Secretary funds an application from a public or private agency or organization under Parts 633, 634, and 635 only if the application receives an average score of 75 or more points.

(Approved by the Office of Management and Budget under control number 1840-0126)

(Authority: 20 U.S.C. 1133-1133b)

Subpart D—What Conditions Must Be Met After an Award?

§ 631.30 What costs are allowable?

Subject to 34 CFR 75.530, governing allowable costs for grants, Federal and matching funds may be used for, but are not limited to, the following:

(a) Salaries for professional and clerical cooperative education staff members.

(b) Release or overload time for faculty involved in the project.

(c) Expenses associated with conducting cooperative education seminars or courses for students.

(d) Per diem and travel expenses of cooperative education project staff and faculty for project related activities.

(e) Fees or honoraria, per diem, and travel expenses for project consultants.

(f) Supplies and telephone costs.

(g) In-service project staff, faculty, and employer training related to the project.

(h) Expenses for developing, printing, and disseminating materials related to the project, including materials designed to recruit students into the project.

(i) Registration fees for training sessions related to cooperative education.

(j) Student travel, but only if the cooperative education student is a member of an advisory board for the project.

(k) Computer equipment with related software costs, and other special equipment related to project activities, if the costs are adequately justified and specifically approved by the Secretary.

(Authority: 20 U.S.C. 1133-1133b)

§ 631.31 What costs are unallowable?

(a) In addition to the costs not allowed under 34 CFR Parts 74 and 75, a grant recipient shall not use Federal and matching funds to pay for the following:

(1) Compensation of students for cooperative education work experiences.

(2) Teaching salaries for academic courses.

(3) Recruitment activities to encourage students to enroll at the grantee institution.

(4) Individual membership fees in professional organizations.

(5) Individual or institutional membership fees in organizations that devote a substantial part of their activities to influencing the passage or defeat of legislation.

(6) Planning for determining the feasibility of establishing a cooperative education project.

(b) Except under the Administration Program under 34 CFR Part 632, a recipient of funds under the Cooperative Education Program—

(1) May use Federal funds only to supplement and, to the extent possible, increase the level of funds that would otherwise have been available from non-Federal sources to carry out the approved activities; and

(2) Shall not use Federal funds to supplant funds from non-Federal sources.

(Authority: 20 U.S.C. 1133-1133b)

PART 632—COOPERATIVE EDUCATION PROGRAM—ADMINISTRATION PROJECTS

Subpart A—General

Sec.
632.1 What is a Cooperative Education Administration project?
632.2 What is eligible for a grant?
632.3 What students are eligible to participate?
632.4 What types of administration projects are eligible for funding?
632.5 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

632.20 What selection criteria does the Secretary use to evaluate Administration applications?
632.21 What special consideration factors does the Secretary use?
632.22 What limitations apply to the number of years an institution may be funded?
632.23 What requirements must an applicant meet to be eligible for funding beyond the basic five-year limitation?
632.24 What limitations apply to a grant amount?

Subpart D—What Conditions Must Be Met After an Award?

632.30 What are the minimum requirements for the frequency and duration of work experiences?
632.31 How are student work experiences evaluated?
632.32 What are the fiscal requirements?

AUTHORITY: 20 U.S.C. 1133-1133a, unless otherwise noted.

SOURCE: 52 FR 29142, Aug. 5, 1987, unless otherwise noted.

Subpart A—General

§ 632.1 What is a Cooperative Education Administration project?

An Administration project is designed to provide students enrolled at an institution of higher education with opportunities to participate in cooperative education, as defined in 34 CFR 631.5(b).

(Authority: 20 U.S.C. 1133a)

§ 632.2 Who is eligible for a grant?

The following are eligible for grant under this part:

(a) Institutions of higher education

(b) Combinations of institutions o higher education.

(Authority: 20 U.S.C. 1133a)

§ 632.3 What students are eligible to par ticipate?

An individual who meets the defini tion of "student" in § 631.5(b) is eligi ble to participate in a project unde this part.

(Authority: 20 U.S.C. 1133a)

§ 632.4 What types of administration projects are eligible for funding?

The Secretary makes awards under this part for the planning, establishment, operation, and expansion of cooperative education projects.

(Authority: 20 U.S.C. 1133a)

§ 632.5 What regulations apply?

The following regulations apply to this program:

(a) The regulations cited in § 631.4(a) and (b).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 632.20 What selection criteria does the Secretary use to evaluate Administration applications?

The Secretary uses the following criteria to evaluate an application for an Administration grant:

(a) *Institutional commitment:* (10 points) The Secretary considers the extent of commitment by reviewing—

(1) The applicant's support for the concept of cooperative education, as reflected, for example, by the inclusion of cooperative education in the institution's mission statement, long-range planning documents, budget, and catalog; and

(2) The chief executive officer's, other key administrators', faculty's,

and governing board's support for the project, including their involvement in the planning and development of the project.

(b) *Plan of operation.* (60 points) The Secretary considers the quality, effectiveness, and extent of the following:

(1) Organizational structure of the project and its relationship to the institution's organizational and academic structure (3 points).

(2) Measurable objectives of the project (6 points).

(3) Strategy for implementing the project (36 points), including, as applicable,—

(i) The activities to be conducted by the applicant and employers, and any training or project development activities conducted by a nonprofit organization or institution;

(ii) The schedule that will be used for conducting project activities and meeting the objectives for each year Federal funds are being requested;

(iii) Plans for modifying the institution's academic calendar and course schedules to meet the needs of the students in the proposed project; and

(iv) Involvement and extent of participation of academic departments, divisions, and colleges within the institution; and

(v) Adequacy of resources, including adequacy of space and equipment.

(4) Provision of work experiences (10 points) based on—

(i) The relevance of the work experiences to the students' academic programs of study or career objectives;

(ii) The work/study calendar for alternating and parallel periods of study and employment;

(iii) The number, frequency, and duration of the work experiences; and

(iv) The level of monitoring and supervision of cooperative education students while they are on work assignments.

(5) The proposed procedures for administering the project, including fiscal control and funds accounting procedures, and for responding to unexpected problems and evaluation results (5 points).

(c) *Quality of key personnel.* (10 points) The Secretary considers the following in determining the quality of key project personnel:

(1) The qualifications of the project director, coordinators, and other key personnel.

(2) The relationship of the qualifications of each professional person involved in the project to the project's stated purposes and objectives.

(d) *Evaluation plan.* (10 points) The Secretary considers—

(1) The quality of the proposed evaluation plan and the extent to which the plan includes evaluation methods that are objective and produce useful data that are quantifiable; and

(2) Beginning in the second year of the project, the quality of the procedures to collect and record data on the impact of the project, including the—

(i) Enrollment and placement of cooperative education students, including data on the students' academic and occupational interests, the type of cooperative education employment, and the students' jobs upon graduation;

(ii) Income earned by students placed in cooperative education jobs;

(iii) Number of employers involved in the project; and

(iv) The increase or decrease in enrollment in the project from year to year.

(e) *Adequacy and reasonableness of the budget.* (10 points) The Secretary considers the extent to which the budget—

(1) Is reasonable in relation to the objectives and scope of the project, and the number of students placed in cooperative education jobs; and

(2) Is reasonable with respect to any costs to be paid to a nonprofit organization or to another institution which assists in the development or expansion of the project.

(Approved by the Office of Management and Budget under control number 1840-0126)

(Authority: 20 U.S.C. 1133a)

§ 632.21 What special consideration factors does the Secretary use?

The Secretary may assign up to 20 additional points to applications from institutions whose projects show the greatest promise of success based on the following factors:

(a) The extent to which public and private sector employers support the project and accept students for jobs related to the students' respective academic programs (5 points), as demonstrated by—

(1) The types of positions for which employers hire cooperative education students;

(2) The match between students' interests and their actual job experiences; and

(3) The number of employers who accept cooperative education students and the number of cooperative education students they hire.

(b) The applicant's plans for continuing cooperative education after the termination of Federal financial assistance, including the sources of support and the amount of funds, personnel and other resources that will be committed to the project (5 points).

(c) The extent to which the institution is committed to expanding cooperative education into an institution-wide cooperative education program (5 points).

(d) The institution's demonstrated commitment to serving special populations such as women, the handicapped, Black, Mexican American, Puerto Rican, Cuban, other Hispanic, American Indian, Alaska Native, Aleut, Native Hawaiian, American Samoan, Micronesian, Guamian (Chamorro), and Northern Marianian students (5 points).

(Approved by the Office of Management and Budget under control number 1840-0126)

(Authority: 20 U.S.C. 1133a)

§ 632.22 What limitations apply to the number of years an institution may be funded?

(a)(1) Except as provided in § 632.23, the Secretary may fund an institution of higher education, either individually or as a member of a combination of institutions, by providing up to five years of financial support for each unit of the institution.

(2) The five-year limitation in paragraph (a)(1) of this section applies to grants received both before and after the enactment of the Higher Education Amendments of 1986 (Pub. L. 99-498).

(b)(1) The Secretary may fund a unit of an institution which meets the requirements given in § 632.23 for a maximum of ten years.

(2) The ten-year funding limit for an individual unit under this part applies regardless of whether the unit was funded individually, or as a part of a grant to a single institution or a combination of institutions.

(Authority: 20 U.S.C. 1133a)

§ 632.23 What requirements must an applicant meet to be eligible for funding beyond the basic five-year limitation?

The Secretary considers an application from an institution of higher education, individually or as a participant in a combination of institutions, for the first year of additional support for cooperative education in a unit which had previously been funded for five years under this part if the applicant institution—

(a) Conducted cooperative education in the unit, which previously received five years of Federal assistance, without Federal financial assistance for at least two academic years subsequent to the end of the fifth year of Federal funding, including the two academic years immediately preceding the year for which the institution reapplies for program support;

(b) Expended for its cooperative education project during each of the academic years in paragraph (a) of this section an amount at least equal to the total cost of the project in the fifth fiscal year in which the institution received an Administration grant under this part; and

(c) Submits an application which contains all the information required by the Secretary, including for each academic year in paragraph (a) of this section information on—

(1) The number of staff and faculty positions involved in the project; and

(2) The number and income of students enrolled in the project.

(Approved by the Office of Management and Budget under control number 1840-0126)

(Authority: 20 U.S.C. 1133a)

§ 632.24 What limitations apply to a grant amount?

(a) No grant may exceed $500,000 for a single institution of higher education or a combination of institutions in any fiscal year.

(b) The Federal share for cooperative education for a unit of a project may not exceed—

(1) Ninety percent of the cost of the unit in the first year the applicant receives a grant;

(2) Eighty percent of the cost in the second year;

(3) Seventy percent of the cost in the third year;

(4) Sixty percent of the cost in the fourth year; and

(5) Thirty percent of the cost in the fifth year.

(c) In addition, the Federal share for funding cooperative education in a unit beyond the fifth year may not exceed the following percentages:

(1) Ninety percent in the sixth year.

(2) Eighty percent in the seventh year.

(3) Seventy percent in the eighth year.

(4) Sixty percent in the ninth year.

(5) Thirty percent in the tenth year.

(Authority: 20 U.S.C. 1133a)

Subpart D—What Conditions Must Be Met After An Award?

§ 632.30 What are the minimum requirements for the frequency and duration of work experiences?

(a) A cooperative education project in an institution of higher education must provide at least one work experience for participating graduate students and undergraduate certificate students, and at least two work experiences for other participating undergraduate students.

(b) The work experiences provided under paragraph (a) of this section must—

(1) Be of a duration consistent with the grantee's academic calendar but not less than the equivalent of a quarter term; and

(2) Provide sufficient opportunities for each student to gain in-depth experience in an area related to his or her academic program or occupational objectives.

(c) Academic credit for work experiences may be awarded at the discretion of the institution.

(Authority: 20 U.S.C. 1133a)

§ 632.31 How are student work experiences evaluated?

During a student's work experiences, the grantee shall assess the student's progress to ensure that the work experiences satisfy the objectives of the student and the cooperative education project.

(Authority: 20 U.S.C. 1133a)

§ 632.32 What are the fiscal requirements?

A grantee shall expend from its own resources for its cooperative education project during the fiscal year in which a grant is received not less than the amount the grantee expended from non-Federal funds for its project during the previous fiscal year for which Federal funds were received.

(Authority: 20 U.S.C. 1133a)

PART 633—COOPERATIVE EDUCATION PROGRAM—DEMONSTRATION PROJECTS

Subpart A—General

Sec.
633.1 What is a Cooperative Education Demonstration project?
633.2 Who is eligible for an award?
633.3 Who is eligible to participate in a demonstration project?
633.4 What types of demonstration projects does the Secretary fund?
633.5 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary make an Award?

633.20 What selection criteria does the Secretary use to evaluate demonstration applications?

AUTHORITY: 20 U.S.C. 1133, 1133b, unless otherwise noted.

SOURCE: 52 FR 29144, Aug. 5, 1987, unless otherwise noted.

Subpart A—General

§ 633.1 What is a Cooperative Education Demonstration project?

A Demonstration project is designed to demonstrate or determine the feasibility or value of innovative methods of cooperative education.

(Authority: 20 U.S.C. 1133b)

§ 633.2 Who is eligible for an award?

The following are eligible to apply for an award under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public or private nonprofit agencies or organizations.

(Authority: 20 U.S.C. 1133b)

§ 633.3 Who is eligible to participate in a demonstration project?

An individual who meets the definition of "student" in § 631.5(b) is eligible to participate in a project under this part.

(Authority: 20 U.S.C. 1133b)

§ 633.4 What types of demonstration projects does the Secretary fund?

The Secretary makes awards under this part for projects that—

(a) Determine the value of existing, innovative methods of cooperative education which have not been fully evaluated;

(b) Determine the feasibility of a proposed, innovative method of cooperative education; or

(c) Disseminate information on successful innovative projects.

(Authority: 20 U.S.C. 1133b)

§ 633.5 What regulations apply?

The following regulations apply to this program:

(a) The regulations cited in § 631.4(a) and (b).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133b)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 633.20 What selection criteria does the Secretary use to evaluate demonstration applications?

The Secretary uses the following selection criteria to evaluate applications under this part:

(a) *Purposes and objectives of the project.* (20 points) The Secretary reviews each application to evaluate the merits of the following:

(1) The purposes of the project.

(2) The extent to which the project is designed to—

(i) Determine the value of existing, innovative methods of cooperative education which have not yet been fully evaluated;

(ii) Determine the feasibility of proposed, innovative methods of cooperative education; or

(iii) Disseminate information on successful innovative projects.

(3) Measurable objectives which relate to the purposes of the project for each year for which Federal funds have been requested.

(4) The expected outcomes of the project, and how the outcomes will benefit cooperative education.

(b) *Project design and plan of operation.* (50 points) The Secretary considers the quality of—

(1) The project's design and the activities to be conducted, including the relationship between the activities and the project objectives; (10 points)

(2) The organizational structure of the project; (5 points)

(3) A schedule for implementing the project's activities and meeting its objectives which shows the way resources will be used in meeting each objective; (10 points)

(4) The plan for effectively and efficiently administering the project; (10 points)

(5) The staffing plan and the time each project person will devote to the project; (10 points) and

(6) Other resources, such as space and equipment, that will be available to the project. (5 points)

(c) *Quality of key personnel.* (10 points) The Secretary considers—

(1) The qualifications of the project director, other professional staff, faculty, and consultants, if used.

(2) The relationship of the qualifications of each professional person involved in the project to the project's stated purposes and objectives.

(d) *Evaluation plan.* (10 points) The Secretary considers the quality of the proposed evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective and produce useful data that are quantifiable.

(e) *Adequacy and reasonableness of the budget.* (10 points) The Secretary considers the extent to which—

(1) Costs for the project are adequate and reasonable compared with the objectives, project design, staffing plan, and plan of operation; and

(2) Funds will be contributed by the applicant and consortium members of the project, if any.

(Approved by the Office of Management and Budget under control number 1840-0126)

(Authority: 20 U.S.C. 1133b)

PART 634—COOPERATIVE EDUCATION PROGRAM—RESEARCH PROJECTS

Subpart A—General

Sec.
634.1 What is a Cooperative Education Research project?
634.2 Who is eligible for an award?
634.3 What types of research projects does the Secretary fund?
634.4 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

634.20 What selection criteria does the Secretary use to evaluate research applications?
634.21 What priorities may the Secretary use?

AUTHORITY: 20 U.S.C. 1133, 1133b, unless otherwise noted.

SOURCE: 52 FR 29145, Aug. 5, 1987, unless otherwise noted.

Subpart A—General

§ 634.1 What is a Cooperative Education Research project?

The purpose of a research project is to conduct studies to improve, develop, or evaluate methods of cooperative education for the benefit of the cooperative education community.

(Authority: 20 U.S.C. 1133b)

§ 634.2 Who is eligible for an award?

The following are eligible to apply for an award under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public or private nonprofit agencies or organizations.

(Authority: 20 U.S.C. 1133b)

§ 634.3 What types of research projects does the Secretary fund?

(a) The Secretary makes awards under this part for research projects related, but not limited, to the following:

(1) Improving the effectiveness of cooperative education projects.

(2) Providing data on the usefulness of cooperative education as an alternative educational approach to assist students to prepare for careers and to finance their educational pursuits.

(3) Developing better cooperation among high schools, institutions of higher education, business, and industry to enhance the opportunity for students to participate in work experiences related to their academic or career objectives.

(b) The Secretary does not fund a project designed to benefit only a single institution.

(Authority: 20 U.S.C. 1133b)

§ 634.4 What regulations apply?

The following regulations apply to this program:

(a) The regulations cited in § 631.4 (a) and (b).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 634.20 What selection criteria does the Secretary use to evaluate research applications?

The Secretary uses the following selection criteria in evaluating research applications under this part:

(a) *Relevancy of research.* (20 points) The Secretary considers the extent to which—

(1) The proposed research is responsive to a major problem or need in cooperative education; and

(2) The findings would be of value to institutions, faculty, students, or employers involved or interested in cooperative education.

(b) *Design of research.* (20 points) The Secretary considers the research design by assessing the objectivity and quality of the—

(1) Definition of the problem or objectives to which the research is directed;

(2) Research methods:

(3) Sampling method to be used, if applicable;

(4) Data collection method to be used, if applicable; and

(5) Plan for analyzing data.

(c) *Plan of operation.* (15 points) The Secretary considers the quality and the effectiveness of—

(1) The plan of management, including the extent to which the plan will ensure proper and efficient administration of the project;

(2) The schedule for implementing the project; and

(3) The way the applicant plans to use its resources and personnel to conduct the project.

(d) *Adequacy of resources.* (10 points) The Secretary considers the extent to which—

(1) The personnel resources the applicant plans to use are adequate;

(2) The facilities that the applicant plans to use are adequate; and

(3) The equipment and supplies that the applicant plans to use are adequate.

(e) *Quality of key personnel.* (20 points) The Secretary considers the quality of the key personnel the applicant plans to use on the project by reviewing—

(1) The qualifications of the project director or principal investigator;

(2) The qualifications of each of the other key personnel to be used in the project; and

(3) The relationship of the qualifications of each professional person involved in the project to the project's stated purposes and objectives.

(f) *Dissemination of results.* (5 points) The Secretary considers the extent to which the results of the research will be disseminated by reviewing—

(1) Publication plans;

(2) Methods of dissemination; and

(3) The dissemination schedule.

(g) *Budget.* (10 points) The Secretary reviews the budget to assure that it is reasonable when compared with the design of the project, the plan of operation, and plans for disseminating the results of the research.

(Approved by the Office of Management and Budget under control number 1840-0126)

(Authority: 20 U.S.C. 1133b)

§ 634.21 What priorities may the Secretary use?

The Secretary may select funding priorities from the following research categories:

(a) Identification and assessment of incentives and factors that influence an institution of higher education to continue its cooperative education project successfully after Federal financial assistance has ended.

(b) Identification and assessment of the factors that influence the participation of students, faculty and employers in cooperative education.

(c) Alternatives to, and methods of, financing cooperative education without Federal support in public and private, 2- and 4-year colleges and universities.

(d) Longitudinal studies on former cooperative education students and non-cooperative education students to determine the relationship between the students' cooperative education work experiences and one or more of the following:

(1) Initial job placement.

(2) Job advancement.

(3) Long-term earnings.

(e) Assessment of the impact of cooperative education on college retention rates and academic achievement of students participating in cooperative education, compared to non-participants.

(f) Assessment of the impact of institution-wide cooperative education projects on—

(1) The institution;

(2) Students at the institution;

(3) Faculty;

(4) Employment opportunities; and

(5) Factors influencing the successes and failures of institution-wide cooperative education projects.

(Authority: 20 U.S.C. 1133b)

PART 635—COOPERATIVE EDUCATION PROGRAM—TRAINING AND RESOURCE CENTER PROJECTS

Subpart A—General

Sec.
635.1 What is a Cooperative Education Training and Resource Center project?
635.2 Who is eligible for an award?
635.3 Who is eligible to participate?
635.4 What activities may the Secretary fund?
635.5 What priorities may the Secretary establish?
635.6 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

635.20 What selection criteria does the Secretary use to evaluate applications?

AUTHORITY: 20 U.S.C. 1133, 1133b, unless otherwise noted.

SOURCE: 52 FR 29146, Aug. 5, 1987, unless otherwise noted.

Subpart A—General

§ 635.1 What is a Cooperative Education Training and Resource Center project?

A Training and Resource Center project is designed to train and assist individuals who participate in or are planning to participate in the planning, establishment, and administration of cooperative education projects.

(Authority: 20 U.S.C. 1133b)

§ 635.2 Who is eligible for an award?

The following are eligible to apply for awards under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public or private nonprofit agencies or organizations.

(Authority: 20 U.S.C. 1133b)

§ 635.3 Who is eligible to participate?

Individuals with a need for training, project-related materials, and technical assistance in the planning, establishment, or administration of a cooperative education project, are eligible to participate in training projects assisted under this part, including—

(a) Presidents and administrators of institutions of higher education, whether or not their institution administers a Federally-funded cooperative education project;

(b) Faculty and staff of institutions of higher education, whether or not their institution administers a Federally-funded cooperative education project;

(c) High school personnel responsible for career and academic guidance; and

(d) Employers or prospective employers of students in a cooperative education project.

(Authority 20 U.S.C. 1133b)

§ 635.4 What activities may the Secretary fund?

(a) The Secretary makes awards under this part for training and resource center projects designed to provide information and develop skills necessary to administer cooperative education projects.

(b) A recipient of an award for a training and resource center project shall conduct one or more of the following activities:

(1) Training project directors, coordinators, faculty members, employers, and other persons mentioned in § 635.3 who are or will be involved in cooperative education.

(2) Improving materials used in cooperative education projects.

(3) Providing technical assistance to institutions of higher education to increase their potential to continue cooperative education programs without Federal funds.

(4) Encouraging model cooperative education projects which furnish education and training in occupations in which there is a national need.

(5) Supporting partnerships in which an institution with an existing institution-wide cooperative education program assists another institution to—

(i) Develop and expand its existing cooperative education program; or

(ii) Establish, improve, or expand an institution-wide cooperative education project.

(Authority: 20 U.S.C. 1133b)

§ 635.5 What priorities may the Secretary establish?

Each year the Secretary may select as a priority one or more of the activities listed in § 635.4.

(Authority: 20 U.S.C. 1133b)

§ 635.6 What regulations apply?

The following regulations apply to this program:

(a) The regulations cited in § 631.4(a) and (b).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 635.20 What selection criteria does the Secretary use to evaluate applications?

The Secretary uses the following selection criteria to evaluate an application under this part:

(a) *Needs assessment.* (21 points) The Secretary considers the extent to which the applicant provides evidence, as applicable, of current need for its project, for example, need for—

(1) Training, technical assistance, and materials in its geographic area;

(2) Training, technical assistance, and materials of a specialized nature addressed to a nationwide clientele; or

(3) Development of model program
partnerships, and institution-wide c
operative education projects.

(b) *Purpose and scope of trainin
and functions of the resource cente*
(15 points) The Secretary conside
the extent to which the purpose of t
project and the scope of the proje
activities to be provided will addre
the needs of the constituency select
to receive training and informatio
based on the use of needs analys
data.

(c) *Plan of operation.* (36 point
The Secretary considers—

(1) The extent to which the appl
cant provides evidence of thoroug
planning for the proposed project, i
cluding the procedures to be used
conducting the project, and the com
mitment of personnel to be involved
conducting the project;

(2) The extent to which the obje
tives and proposed outcomes of th
project relate to the project's purpo
and the results of the needs asses
ment;

(3) The quality of the actual desig
of the project, including plans f
dealing with unexpected problems an
evaluation results;

(4) The quality of the activities to b
conducted and their relationship t
the criteria in paragraph (c)(2) of thi
section;

(5) The quality of the methods an
procedures to be used in conductin
the project's training plan;

(6) The proposed schedule for con
ducting project activities and trainin
sessions, including the subject matte
to be covered at each session, the du
ration and geographic location of th
sessions, and the proposed number o
participants to be served at each ses
sion;

(7) The extent to which the appli
cant will ensure that project partici
pants who are otherwise eligible t
participate are selected without regar
to race, color, national origin, gender
age, or handicapping condition;

(8) The quality of the plan for man
aging the project; and

(9) The extent to which the pro
posed project has promise of fulfillin
the proposed objectives and the current need for the project.

(d) *Quality of key personnel.* (9 points) The Secretary considers—

(1) The qualifications and training skills of the project director;

(2) The qualifications of other professional personnel, including consultants, to be used in the project; and

(3) The relationship of the qualifications of each professional person involved in the project to the project's stated purposes and objectives.

(e) *Adequacy of resources.* (8 points) The Secretary considers the extent to which—

(1) Personnel resources are available and adequate for conducting the project's activities.

(2) Physical facilities are available and adequate for conducting the project's activities; and

(3) Necessary equipment and other required resources are available for conducting the project's activities.

(f) *Evaluation plan.* (6 points) The Secretary considers the quality of the proposed evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective and produce useful data that are quantifiable.

(g) *Budget.* (5 points) The Secretary considers the extent to which the budget is reasonable compared with the scope of training and the plan of operation.

(Approved by the Office of Management and Budget under control number 1840-0126)

(Authority: 20 U.S.C. 1133b)

PART 636—SUPPLEMENTAL FUNDS PROGRAM FOR COOPERATIVE EDUCATION

Subpart A—General

Sec.
636.1 Supplemental Funds Program for Cooperative Education.
636.2 Eligible grantees.
636.3 Regulations that apply to this program.
636.4 Definitions that apply to this program.

Sec.

Subpart B—Activities the Secretary Assists Under This Program

636.10 Eligible activities.

Subpart C—How To Apply for a Grant

636.20 Application information.
636.21 Minimum award level.

Subpart D—How the Secretary Makes a Grant

636.30 Distribution of funds.

Subpart E—Conditions a Grantee Must Meet

636.40 Allowable costs.
636.41 Unallowable costs.

AUTHORITY: 42 U.S.C. 2752(d) (as in effect prior to enactment of the Higher Education Amendments of 1986 (Pub. L. 99-498)); Pub. L. 99-178; H.R. 5233, as referenced in Pub. L. 99-591.

SOURCE: 47 FR 18853, May 3, 1982, unless otherwise noted.

Subpart A—General

§ 636.1 Supplemental Funds Program for Cooperative Education.

In awarding 50 percent of the unused College Work-Study Program funds that are available for reallotment as supplemental funds, the Secretary gives preference to eligible institutions of higher education for use in initiating, improving, and expanding programs of cooperative education that offer students alternating or parallel periods of academic study and public or private employment that—

(a) Afford students the opportunity to earn funds necessary for continuing and completing their education; and

(b) As far as practicable, give students work experience related to their academic or occupational objectives.

(Authority: 42 U.S.C. 2752(d))

§ 636.2 Eligible grantees.

The following are eligible to apply for grants under this part:

(a) Institutions of higher education that conduct programs of cooperative education—as described in § 636.1—and propose to initiate programs of Cooperative Education, as defined in 34 CFR 631.5(b).

(b) Institutions of higher education that conduct programs of Cooperative

Education—as defined in 34 CFR 631.5(b)—and propose to improve and expand those programs.

(Authority: 20 U.S.C. 1133, 42 U.S.C. 2752(d))

[47 FR 18853, May 3, 1982, as amended at 52 FR 29147, Aug. 5, 1987]

§ 636.3 Regulations that apply to this program.

The following regulations apply to institutions receiving funds under this part:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 636.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1133, 42 U.S.C. 2752(d))

§ 636.4 Definitions that apply to this program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Contract
EDGAR
Equipment
Grant
Grantee
Secretary

(b) *Definitions in the Cooperative Education Program.* The following terms used in this part are defined in 34 CFR Part 631:

Act
Alternating periods of study and employment
Cooperative Education
Institutions of higher education
Parallel periods of study and employment
Student

(c) *Definitions that apply to this part.* The following definitions apply to this part:

Assisted means both of the following:

(1) Received academic and career counseling; and

(2) Was placed in a work experience by a program of cooperative education.

College Work-Study Program award year means the period between July 1 of one year and June 30 of the n year.

Expand Cooperative Educat means offer Cooperative Education, defined in 34 CFR 631.5(b), to s dents in an academic department discipline not presently participat in a program of Cooperative Edu tion, or increase the number of s dents served in a program of Coope tive Education.

Full-time equivalent student mea two or more students whose cre hours, when combined, equal t number of credit hours that a fu time student at that institution higher education is required to carry

Improve Cooperative Educati means provide additional support to program of Cooperative Education, defined in 34 CFR 631.5(b).

Initiate Cooperative Educati means bring an existing program cooperative education—as described § 636.1—into conformity with a pr gram of Cooperative Education, as d fined in 34 CFR 631.5(b).

(Authority: 20 U.S.C. 1221e-3(a)(1), 1133, U.S.C. 2752(d))

[47 FR 18853, May 3, 1982, as amended at FR 29147, Aug. 5, 1987]

Subpart B—Activities the Secretary Assists Under This Program

§ 636.10 Eligible activities.

Supplemental funds shall be us for initiating, improving, and expan ing programs of Cooperative Educ tion, as defined in 34 CFR 631.5(b).

(Authority: 42 U.S.C. 2752(d))

[47 FR 18853, May 3, 1982, as amended at FR 29147, Aug. 5, 1987]

Subpart C—How To Apply for a Grant

§ 636.20 Application information.

(a) To receive funds under this par an institution of higher educatio must submit an application to the Se retary on official institutional statio ery and at such time as the Secretar may require.

(b) An application must contain—

(1) The number of full-time students assisted by the institution's program of cooperative education during the most recently completed College Work-Study Program award year;

(2) The number of full-time equivalent students assisted by the institution's program of cooperative education during the most recently completed College Work-Study Program award year; and

(3) A narrative budget describing how the funds will be used for initiating, improving, and expanding a program of Cooperative Education. The budget must be submitted to the Department of Education *after* the Secretary advises the institution of the amount of the grant to be awarded.

(c) In calculating the number of students assisted in a program of cooperative education, an applicant may include students assisted under the College Work-Study Program.

(Authority: 20 U.S.C. 1133, 42 U.S.C. 2752(d))

§ 636.21 Minimum award level.

The Secretary will not issue an award to an institution that does not qualify, under the formula specified in § 636.30, for an award of at least $500.

(Authority: 20 U.S.C. 1221e-3(a)(1), 42 U.S.C. 2752(d))

Subpart D—How the Secretary Makes a Grant

§ 636.30 Distribution of funds.

The Secretary awards supplemental funds available for distribution under this part in accordance with the formula contained in Section 442(d)(2) of the Higher Education Act of 1965, as amended prior to enactment of the Higher Education Amendments of 1986. Under that formula, each eligible institution's share of supplemental funds is based on a ratio of—

$$\frac{\text{The number of full-time students and full-time equivalent students assisted in the program of cooperative education at the institution}}{\text{The number of full-time students and full-time equivalent students assisted in programs of cooperative education in all eligible applicant institutions}} \times \text{50\% of unused College Work Study Program funds available for reallotment}$$

(Authority: 20 U.S.C. 1221e-3(a)(1), 42 U.S.C. 2752(d))

[47 FR 18853, May 3, 1982, as amended at 52 FR 29147, Aug. 5, 1987]

Subpart E—Conditions a Grantee Must Meet

§ 636.40 Allowable costs.

A grantee may pay from its grant those costs allowed under 34 CFR 75.530 and 34 CFR 631.30.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1133, 42 U.S.C. 2752(d))

[47 FR 18853, May 3, 1982, as amended at 52 FR 29147, Aug. 5, 1987]

§ 636.41 Unallowable costs.

A grantee may not use its grant to pay for those costs disallowed under 34 CFR 75.519, 34 CFR 75.530 through 75.533 or 34 CFR 631.31.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1133, 42 U.S.C. 2752(d))

[47 FR 18853, May 3, 1982, as amended at 52 FR 29147, Aug. 5, 1987]

PART 637—MINORITY SCIENCE IMPROVEMENT PROGRAM

Subpart A—General

Sec.
637.1 What is the Minority Science Improvement Program (MISIP)?
637.2 Who is eligible to receive a grant?
637.3 What regulations apply to the Minority Science Improvement Program?
637.4 What definitions apply to the Minority Science Improvement Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

637.11 What kinds of projects are supported by this program?
637.12 What are institutional projects?
637.13 What are design projects?
637.14 What are special projects?
637.15 What are cooperative projects?

Sec.

Subpart C—How Does One Apply for a Grant?

637.21 Application procedures.

Subpart D—How Does the Secretary Make a Grant?

637.31 How does the Secretary evaluate an application?
637.32 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Grantee?

637.41 What are the cost restrictions on design project grants?

AUTHORITY: 20 U.S.C. 1135b-1135b-3, 1135d-1135d-6, unless otherwise noted.

SOURCE: 46 FR 51204, Oct. 16, 1981, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes for Part 637 appear at 52 FR 43544, Nov. 12, 1987.

Subpart A—General

§ 637.1 What is the Minority Science Improvement Program (MISIP)?

The Minority Science Improvement Program is designed to effect long-range improvement in science education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities into scientific careers.

(Authority: 20 U.S.C. 1135b)

§ 637.2 Who is eligible to receive a grant?

The following parties are eligible to receive grants:

(a) Public and private, nonprofit minority institutions as defined in § 637.4(b) for minority institutions.

(b) Nonprofit science-oriented organizations, professional scientific societies, and all nonprofit, accredited colleges and universities which render a needed service to a group of eligible minority institutions or which provide in-service training for project directors, scientists, and engineers from eligible minority institutions.

(Authority: 20 U.S.C. 1135d)

§ 637.3 What regulations apply to the
nority Science Improvement Progra

The following regulations apply
the Minority Science Improveme
Program:

(a) The Education Department Ge
eral Administrative Regulatio
(EDGAR) in 34 CFR Part 74 (Admin
tration of Grants), Part 75 (Dire
Grant Programs), Part 77 (Definitio
that Apply to Department Regu
tions), Part 78 (Education Appe
Board), and 34 CFR Part 79 (Intergo
ernmental Review of Department
Education Programs and Activities).

(b) The regulations in this Part 6

(Authority: 20 U.S.C. 1135b-1135b-3 a
1135d-1135d-6)

[46 FR 51204, Oct. 16, 1981, as amended
52 FR 43544, Nov. 12, 1987; 55 FR 217
May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21715, M
25, 1990, § 637.3(a) was amended by remo
ing the word "and", and adding ", and
CFR Part 79 (Intergovernmental Review
Department of Education Programs and A
tivities)" before the period at the end of t
sentence, effective either 45 days after pu
lication in the FEDERAL REGISTER or later
Congress takes certain adjournments. T
Department of Education will publish a do
ument in the FEDERAL REGISTER at a lat
date, announcing the effective date.

§ 637.4 What definitions apply to the M
nority Science Improvement Progra

(a) *Definitions in EDGAR.* The fo
lowing terms used in this part are de
fined in 34 CFR Part 77.

Applicant
Application
Department
EDGAR
Grants
Grantee
Nonprofit
Private
Project
Project period
Secretary

(b) *Definitions that apply to thi
part:*

Accredited means currently certifie
by a nationally recognized accreditin
agency or making satisfactory progre
toward achieving accreditation.

Act means the Higher Education Act
of 1965, as amended.

Minority means American Indian, Alaskan Native, black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander or other ethnic group underrepresented in science and engineering.

Minority institution means an accredited college or university whose enrollment of a single minority group or a combination of minority groups as defined in this section exceeds fifty percent of the total enrollment. The Secretary verifies this information from the data on enrollments (Higher Education General Information Surveys HEGIS XIII) furnished by the institution to the Office for Civil Rights, Department of Education.

Science means, for the purposes of this program, the biological, engineering, mathematical, physical, and social sciences, and the history and philosophy of science; also included are interdisciplinary fields which are comprised of overlapping areas among two or more sciences.

Underrepresented in science and engineering means a minority group whose number of scientists and engineers per 10,000 population of that group is substantially below the comparable figure for scientists and engineers who are white and not of Hispanic origin.

(Authority: 20 U.S.C. 1355b-1135b-3, and 1135-d-5)

[46 FR 51204, Oct. 16, 1981, as amended at 52 FR 43544, Nov. 12, 1987]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 637.11 What kinds of projects are supported by this program?

The Secretary awards grants under this program for all or some of the following categories of projects:

(a) Institutional projects for implementing a comprehensive science improvement plan as described in § 637.12.

(b) Design projects for developing a long-range science improvement plan as described in § 637.13.

(c) Special projects to support activities as described in § 637.14.

(d) Cooperative projects to share facilities and personnel and disseminate information as described in § 637.15.

(Authority: 20 U.S.C. 1135b-2)

§ 637.12 What are institutional projects?

(a) Institutional project grants support the implementation of a comprehensive science improvement plan, which may include any combination of activities for improving the preparation of minority students for careers in science.

(b) Activities that the Secretary may assist under an institutional project include, but are not limited to, the following:

(1) Faculty development programs; or

(2) Development of curriculum materials.

(Authority: 20 U.S.C. 1135b-2, 1135d-5)

[46 FR 51204, Oct. 16, 1981, as amended at 52 FR 43545, Nov. 12, 1987]

§ 637.13 What are design projects?

(a) Design project grants assist minority institutions that do not have their own appropriate resources or personnel to plan and develop long-range science improvement programs.

(b) Activities that the Secretary may assist under a design project include, but are not limited to, the following:

(1) Development of planning, management, and evaluation systems; and

(2) Improvement of institutional research or development offices.

(Authority: 20 U.S.C. 1135b-2, 1135d-5)

[46 FR 51204, Oct. 16, 1981, as amended at 52 FR 43545, Nov. 12, 1987]

§ 637.14 What are special projects?

There are two types of special projects grants—

(a) Special project grants for which minority institutions are eligible which support activities that—

(1) Improve quality training in science and engineering at minority institutions; or

(2) Enhance the minority institutions' general scientific research capabilities.

(b) Special project grants for which all applicants are eligible which support activities that—

(1) Provide a needed service to a group of eligible minority institutions; or

(2) Provide in-service training for project directors, scientists, and engineers from eligible minority institutions.

(c) Activities that the Secretary may assist under a special project include, but are not limited to, the following:

(1) Advanced science seminars;

(2) Science faculty workshops and conferences;

(3) Faculty training to develop specific science research or education skills;

(4) Research in science education;

(5) Programs for visiting scientists;

(6) Preparation of films or audio-visual materials in science;

(7) Development of learning experiences in science beyond those normally available to minority undergraduate students;

(8) Development of pre-college enrichment activities in science; and

(9) Any other activities designed to address specific barriers to the entry of minorities into science.

(d) Minority institutions are eligible to apply for special projects of the type listed in paragraph (a) of this section. All applicants eligible for assistance under this program may apply for special projects of the type listed in paragraphs (b) and (c) of this section.

(Authority: 20 U.S.C. 1135b-2, 1135d-5)

[46 FR 51204, Oct. 16, 1981, as amended at 52 FR 43545, Nov. 12, 1987]

§ 637.15 What are cooperative projects?

(a) Cooperative project grants assist groups of nonprofit accredited colleges and universities to work together to conduct a science improvement project.

(b) Activities that the Secretary may fund under cooperative projects include, but are not limited to, the following:

(1) Assisting institutions in sharing facilities and personnel;

(2) Disseminating information about established programs in science and engineering;

(3) Supporting cooperative efforts to strengthen the institutions' science and engineering programs; and

(4) Carrying out a combination of any of the activities in paragraphs (c)(1)-(3) of this section.

(c) Eligible applicants for cooperative projects are groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in § 637.4(b).

(Authority: 20 U.S.C. 1135b-2, 1135d-5)

Supbart C—How Does One Apply for a Grant?

§ 637.21 Application procedures.

One applies for a grant under the procedures of EDGAR §§ 75.100 through 75.129.

Subpart D—How Does the Secretary Make a Grant?

§ 637.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 637.32.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score of each criterion is indicated in parentheses.

(d) The Secretary gives priority to applicants which have not previously received funding from the program and to previous grantees with a proven record of success, as well as to applications that contribute to achieving balance among funded projects with respect to:

(1) Geographic region;

(2) Academic discipline; and

(3) Project type.

(Authority: 20 U.S.C. 1135b-1, 1135d-3)

[46 FR 51204, Oct. 16, 1981, as amended at 52 FR 43545, Nov. 12, 1987]

§ 637.32 What selection criteria does the Secretary use?

The Secretary evaluates applications using the following criteria:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) Higher quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) Methods of coordination. (See EDGAR 34 CFR 75.581)

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project.

(iv) The extent to which the applicant, as part of its nondiscriminatory emloyment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of a racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objective of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See EDGAR 34 CFR 75.590—Evaluation by the grantee; where applicable)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 20 U.S.C. 1135b-1, 1135d-3)

(f) *Identification of need for the project.* (10 points)

(1) The Secretary reviews each application for information that shows the identification of need for the project.

(2) The Secretary looks for information that shows—

(i) An adequate needs assessment;

(ii) An identification of specific needs in science; and

(iii) An involvement of appropriate individual, especially science faculty, in identifying the institutional needs.

(g) *Potential institutional impact of the project.* (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project gives evidence of potential for enhancing the institution's capacity for improving and maintaining quality science education for its minority students.

(2) The Secretary looks for information that shows—

(i) For an institutional or cooperative project, the extent to which both the established science education program(s) and the proposed project will expand or strengthen the established program(s) in relation to the identified needs; or

(ii) For a design project, the extent to which realistic long-range science education improvement plans will be developed with the technical assistance provided under the project; or

(iii) For a special project, the extent to which it addresses needs that have not been adequately addressed by an existing institutional science program or takes a particularly new and exemplary approach that has not been taken by any existing institutional science program.

(h) *Institutional commitment to the project.* (15 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to continue the project activities when funding ceases.

(2) The Secretary looks for information that shows—

(i) Adequate institutional commitment to absorb any after-the-grant burden initiated by the project;

(ii) Adequate plans for continuation of project activities when funding ceases;

(iii) Clear evidence of past institutional commitment to the provision of quality science programs for its minority students; and

(iv) A local review statement signed by the chief executive officer of the institution endorsing the project and indicating how the project will accelerate the attainment of the institutional goals in science.

(i) *Expected outcomes.* (10 points)

(1) The Secretary reviews each application to determine the extent to which minority students will benefit from the project.

(2) The Secretary looks for information that shows—

(i) Expected outcomes likely to result in the accomplishment of the program goal;

(ii) Educational value for science students; and

(iii) Possibility of long-term benefits to minority students, faculty, or the institution.

(j) *Scientific and educational value of the proposed project.* (10 points)

(1) The Secretary reviews each application for information that shows its potential for contributions to science education.

(2) The Secretary looks for information that shows—

(i) The relationship of the proposed project to the present state of science education;

(ii) The use or development of effective techniques and approaches in science education; and

(iii) Potential use of some aspects of the project at other institutions.

(Approved by the Office of Management and Budget under control number 1840-0109)

(Authority: 20 U.S.C. 1135b-1, 1135d-3)

[46 FR 51204, Oct. 16, 1981, as amended at 53 FR 49146, Dec. 6, 1988]

Subpart E—What Conditions Must be Met by a Grantee?

§ 637.41 What are the cost restrictions on design project grants?

For design project grants funds may not be used to pay more than fifty percent of the academic year salaries of faculty members involved in the project.

(Authority: 20 U.S.C. 1135b-2, 1135d-5)

PART 639—LAW SCHOOL CLINICAL EXPERIENCE PROGRAM

Subpart A—General

Sec.
639.1 Law School Clinical Experience Program.
639.2 Eligible parties.
639.3 Regulations that apply to the Law School Clinical Experience Program.
639.4 Definitions.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

639.10 Authorized activities.
639.11 How does the Secretary establish priorities?

Sec.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

639.30 How does the Secretary evaluate an application?
639.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must a Grantee Meet?

639.40 Costs.

AUTHORITY: 20 U.S.C. 1134s-1134t, unless otherwise noted.

SOURCE: 46 FR 36339, July 14, 1981, unless otherwise noted.

Subpart A—General

§ 639.1 Law school clinical experience program.

(a) The Law School Clinical Experience Program provides assistance to accredited law schools for establishing or expanding programs of clinical experience for students in the practice of law.

(b) Expanding programs of clinical experience includes, but is not limited to, any of the following:

(1) Development of new areas of clinical experience.

(2) Increase in the number of participating students.

(3) Provision of appropriate and improved supervision.

(4) Development and implementation of new teaching techniques.

(Authority: 20 U.S.C. 1134s)

[46 FR 36339, July 14, 1981, as amended at 52 FR 12508, Apr. 16, 1987]

§ 639.2 Eligible parties.

The following are eligible to apply:

(a) Individual law schools that have een accredited by a nationally recogized agency approved by the Secreary.

(b) A combination or consortium of ccredited law schools.

Authority: 20 U.S.C. 1134s(d))

46 FR 36339, July 14, 1981, as amended at 2 FR 12508, Apr. 16, 1987]

§ 639.3 Regulations that apply to the Law School Clinical Experience Program.

The following regulations apply to grants under the Law School Clinical Experience Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions that Apply to Department Regulations), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities); and

(b) The regulations in this Part 639.

(Authority: 20 U.S.C. 1134s)

[46 FR 36339, July 14, 1981, as amended at 52 FR 12508, Apr. 16, 1987; 55 FR 21715, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21715, May 25, 1990, § 639.3(a) was amended by removing the word "and" after the word "(Direct Grant Programs)" and adding, in its place a comma, and by removing "(Definitions)" and adding in its place, the words "(Definitions that Apply to Department Regulation), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence, effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 639.4 Definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in EDGAR, 34 CFR Part 77:

Applicant
Application
Award
Contract
Department
EDGAR
Grant
Project
Secretary

(b) *Definitions that apply to this part.* The following definition applies to this part:

Simulation is a learning exercise that examines and helps to explain a theory or concept by requiring a law student, as an active participant, to simulate the role of a lawyer confronted with a legal problem of a client (See § 639.10(b) for exclusions).

(Authority: 20 U.S.C. 1134s(a))

[46 FR 36339, July 14, 1981, as amended at 52 FR 12508, Apr. 16, 1987]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 639.10 Authorized activities.

(a) Authorized activities under this program include the development—through simulation, or actual experience, or both—of skills usable in the practice of law.

(1) These skills include, but are not limited to, interviewing witnesses, factual and related investigation and analysis, counseling clients, negotiating compromises, drafting documents, advocacy before legal decision-makers, and training in professional responsibility.

(2) These skills may be taught by involving the students in any one or more of the following:

(i) Judicial, administrative, executive, or legislative proceedings;

(ii) Office or house counsel problems; or

(iii) Factual investigation, empirical research, or policy or legal analysis.

(b) The Secretary does not fund moot court activities or student exercises of the type usually performed in courses on legal research and writing.

(Authority: 20 U.S.C. 1134s(a))

[46 FR 36339, July 14, 1981, as amended at 52 FR 12508, Apr. 16, 1987]

§ 639.11 How does the Secretary establish priorities?

(a) The Secretary gives priority to applications proposing projects to provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom.

(b) In addition to the priority in paragraph (a) of this section, the Secretary may give priority to applications that propose activities to provide service to persons who have difficulty in gaining access to legal representation.

(Authority: 20 U.S.C. 1134s(a))

NOTE: EDGAR establishes the method for applying priorities. See 34 CFR 75.105.

[52 FR 12508, Apr. 16, 1987]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 639.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 639.31.

(1) The Secretary awards up to 100 possible points for these criteria.

(2) The maximum possible score for each criterion is indicated in parentheses following the title.

(b) Among applications of relatively equal quality, the Secretary may give priority to applications that:

(1) Ensure a wide geographic distribution throughout the United States of law school clinical experience programs; and

(2) Ensure that a wide variety of client groups are served.

(Authority: 20 U.S.C. 1134s(a) and 1134t(b))

[46 FR 36339, July 14, 1981, as amended at 52 FR 12508, 12509, Apr. 16, 1987]

§ 639.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that

ve been traditionally underrepre-
nted, such as—
A) Members of racial or ethnic mi-
rity groups;
B) Women;
C) Handicapped persons; and
D) The elderly.
b) *Quality of key personnel.* (15
nts)
1) The Secretary reviews each ap-
cation for information that shows
e quality of the key personnel the
plicant plans to use on the project.
2) The Secretary looks for informa-
n that shows—
i) The qualifications of the project
ector (if one is to be used);
i) The qualifications of each of the
er key personnel to be used in the
ject;
ii) The time that each person re-
ed to in paragraphs (b)(2) (i) and
of this section plans to commit to
project; and
v) The extent to which the appli-
t, as part of its nondiscriminatory
ployment practices, encourages ap-
ations for employment from per-
s who are members of groups that
e been traditionally underrepre-
ed, such as—
) Members of racial or ethnic mi-
ty groups;
) Women;
) Handicapped persons; and
) The elderly.
) To determine the qualifications
person, the Secretary considers
ence of past experience and train-
in fields related to the objectives
ne project, as well as other infor-
on that the applicant provides.
Budget and cost effectiveness. (5
ts)
The Secretary reviews each ap-
tion for information that shows
project has an adequate budget
s cost effective.
The Secretary looks for informa-
that shows—
The budget for the project is ade-
e to support the project activities;

Costs are reasonable in relation
e objectives of the project.
Evaluation plan. (5 points)
The Secretary reviews each ap-
ion for information that shows
the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Fiscal commitment.* (15 points)

The Secretary looks for information that shows the degree to which the institution's regular budget provides funds for its clinical legal education program.

(g) *Faculty supervision.* (20 points)

The Secretary reviews each application for information that shows the extent to which the proposed project will increase the participation of law school faculty in the supervision of students under the clinical legal education program.

(h) *Academic credits.* (10 points)

The Secretary reviews each application for information that shows that the proposed program of law school clinical experience provides for the award of academic credits to participating students.

(Approved by the Office of Management and Budget under control number 1840-0041)

(Authority: 20 U.S.C. 1134s(a))

[46 FR 36339, July 14, 1981, as amended at 52 FR 12508, Apr. 16, 1987; 53 FR 49146, Dec. 6, 1988]

Subpart E—What Conditions Must a Grantee Meet?

§ 639.40 Costs.

(a)(1) The Secretary makes available funds to cover up to 90 percent of the cost of establishing and expanding a Law School Clinical Experience project, subject to the limitations and applicable cost principles in EDGAR.

(2) The Secretary annually may establish a lower maximum Federal share that may take into account the number of years that a grantee has been funded under this program.

(b) Federal funds for a particular law school or consortium of law schools may not exceed $100,000 in any fiscal year, no part of which may be used to pay for indirect costs or charges.

(c) Allowable costs are direct costs incurred in carrying out an approved project, including:

(1) Planning;

(2) Training of faculty members and salary for additional faculty members;

(3) Travel and per diem for faculty and students;

(4) Reasonable stipends for students for work in the public service performed as part of any such program at a time other than during the regular academic year;

(5) Equipment and library resources;

(6) Involving practicing lawyers in the process of training law students to perform as lawyers; and

(7) Such other items as are allowed pursuant to these regulations.

(Authority: 20 U.S.C. 1134s(a)-(c))

[46 FR 36339, July 14, 1981, as amended at 52 FR 12508, Apr. 16, 1987]

PART 642—TRAINING PROGRAM FOR SPECIAL PROGRAMS STAFF AND LEADERSHIP PERSONNEL

Subpart A—General

Sec.

642.1 Training Program for Special Programs Staff and Leadership Personnel.
642.2 Eligible applicants.
642.3 Eligible participants.
642.4 Regulations that apply to the Training Program.
642.5 Definitions that apply to the Training Program.
642.6 What is the allowable number of applications?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

642.10 Activities the Secretary Assists Under the Training Program.

Sec.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

642.30 How the Secretary evaluates an application for a new award.
642.31 Selection criteria the Secretary uses.
642.32 Prior experience.
642.33 Geographic distribution.
642.34 Priorities for funding.

Subpart E—What Conditions Must Be Met by a Grantee?

642.40 Allowable costs.
642.41 Nonallowable costs.

AUTHORITY: 20 U.S.C. 1070d-1d, unless otherwise noted.

SOURCE: 47 FR 17788, Apr. 23, 1982, unless otherwise noted.

Subpart A—General

§ 642.1 Training Program for Special Programs Staff and Leadership Personnel.

The Training Program for Special Programs Staff and Leadership Personnel—referred to in these regulations as the Training Program—provides Federal financial assistance for the training of staff and leadership personnel employed in, or preparing for employment in, projects under the Special Programs for Students from Disadvantaged Backgrounds—referred to in these regulations as Special Programs.

(Authority: 20 U.S.C. 1070d, 1070d-1d)

§ 642.2 Eligible applicants.

The following are eligible to apply for a grant to carry out a Training Program project:

(a) Institutions of higher education.

(b) Public and nonprofit private agencies and organizations.

(Authority: 20 U.S.C. 1070d, 1070d-1d)

§ 642.3 Eligible participants.

The following are eligible for training under this program:

(a) Leadership personnel and full and part-time staff members of projects under the Special Programs.

(b) Individuals preparing for employment as staff or leadership personnel in projects under the Special Programs.

(Authority: 20 U.S.C. 1070d, 1070d-1d)

§ 642.4 Regulations that apply to the Training Program.

The following regulations apply to the Training Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and in 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 642.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 642.5 Definitions that apply to the Training Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
State
Supplies

(b) *Definitions that apply to this part.* The following definitions apply to this part:

Act means the Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1001 et seq.)

Institution of higher education means an educational institution as defined in sections 1201(a) and 481 of the Higher Education Act of 1965, as amended.

Authority: 20 U.S.C. 1141(a); 1088)

Leadership personnel means project irectors, coordinators, and other indiiduals involved with the supervision nd direction of projects under the pecial Programs.

Authority: 20 U.S.C. 1070d; 1070d-1d)

Special Programs means the Upward Bound, Talent Search, Student Support Services, Educational Opportunity Centers, and Ronald E. McNair Post-Baccalaureate Achievement Programs.

(Authority: 20 U.S.C. 1070d-1d)

[47 FR 17788, Apr. 23, 1982, as amended at 54 FR 7737, Feb. 22, 1989]

§ 642.6 What is the allowable number of applications?

An applicant may submit only one application for—

(a) Each priority the Secretary announces under § 642.34(a); and

(b) Each significant training need addressed under § 642.34(b).

(Authority: 20 U.S.C. 1070d-1d)

[54 FR 7737, Feb. 22, 1989]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 642.10 Activities the Secretary assists under the Training Program.

(a) The Secretary awards assistance to train the staff and leadership personnel of a Special Programs project to enable them to more effectively operate Special Programs projects.

(b) The grants may provide support for conferences, seminars, internships, workshops, and the publication of manuals designed to improve the operations of the Special Programs.

(Authority: 20 U.S.C. 1070d-1d)

[47 FR 17788, Apr. 23, 1982, as amended at 54 FR 7737, Feb. 22, 1989]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 642.30 How the Secretary evaluates an application for a new award.

(a) The Secretary evaluates an application on the basis of the criteria in § 642.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in

the parentheses next to the heading of that criterion.

(b) In addition, for applicants that have conducted a Training Program project within the three fiscal years prior to the fiscal year for which the applicant is applying, the Secretary considers the experience of the applicant on the basis of § 642.32.

(Authority: 20 U.S.C. 1070d, 1070d-1d)

§ 642.31 Selection criteria the Secretary uses.

The Secretary uses the criteria in paragraphs (a) through (f) of this section to evaluate applications:

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of managment that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person ferred to in paragraphs (b)(2)(i) a (ii) of this section plans to commit the project; and

(iv) The extent to which the app cant, as part of its nondiscriminato employment practices, encourages plications for employment from p sons who are members of groups th have been traditionally underrep sented, such as—

(A) Members of racial or ethnic n nority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualificatio of a person, the Secretary conside evidence of past experience and trai ing, in fields related to the objectiv of the project, as well as other info mation that the applicant provides.

(c) *Budget and cost effectiveness.* (points)

(1) The Secretary reviews each a plication for information that show that the project has an adequa budget and is cost effective.

(2) The Secretary looks for inform tion that shows—

(i) The budget for the project is ad quate to support the project activitie and

(ii) Costs are reasonable in relatio to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each a plication for information that show the quality of the evaluation plan fo the project.

(2) The Secretary looks for informa tion that shows methods of evaluatio that are appropriate for the projec and, to the extent possible, are objec tive and produce data that are quanti fiable.

(e) *Adequacy of resources.* (15 points

(1) The Secretary reviews each ap plication for information that show that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (25 points)

(1) The Secretary reviews each application for information that shows a need for a Training Program project.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed training addresses a specific need not addressed by other training projects available to Special Programs personnel;

(ii) The extent to which the proposed training addresses a significant training need in the region(s) to be served; and

(iii) The extent to which the proposed training addresses needs that are consistent with the priorities established by the Secretary as authorized under § 642.34.

(Authority: 20 U.S.C. 1221e-3(a)(1); 1070d, 1070d-1d)

§ 642.32 Prior experience.

(a)(1) The Secretary gives priority to each applicant that has conducted a Training Program project under Title IV-A-4 of the Higher Education Act within the three fiscal years prior to the fiscal year for which the applicant is applying.

(2) To determine the number of priority points to be awarded each eligible applicant, the Secretary considers the applicant's prior experience of service delivery in accordance with paragraphs (b) and (c) of this section.

(b)(1) The Secretary may add from one to eight points to the point score obtained on the basis of the selection criteria in § 642.31, based on the applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (c) of this section.

(2) The maximum possible score for each criterion is indicated in the parentheses preceding the criterion.

(c) The Secretary—based on information contained in one or more of the following: Performance reports, audit reports, training site visit reports, evaluations by participants, project evaluation reports, the previously funded application, the negotiated program plan(s), and the application under consideration—looks for information that shows—

(1) (2 points) The extent to which the project has served the number and kinds of training participants it was funded to serve;

(2) (2 points) The extent to which participants benefited from training in areas such as—

(i) Increased qualifications and skills in meeting the needs of disadvantaged students; and

(ii) Increased knowledge and understanding of the Special Programs;

(3) (2 points) The extent to which the applicant has achieved other goals and objectives as stated in the previously funded application or negotiated program plan; and

(4) (2 points) The extent to which the applicant has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of the previously funded award.

(Authority: 20 U.S.C. 1070d, 1070d-1d; Senate Rept. 96-733, 96 Cong. 1st Sess. p. 28)

[47 FR 24973, June 8, 1982]

§ 642.33 Geographic distribution.

The Secretary, to the greatest extent possible, awards grants for Training Program projects that will be carried out in all of the regions of the Nation in order to assure accessibility to prospective training participants.

(Authority: 20 U.S.C. 1070d, 1070d-1d)

§ 642.34 Priorities for funding.

(a) The Secretary, after consultation with regional and State professional associations of persons having special knowledge with respect to the training needs of Special Programs personnel, may select one or more of the following subjects as training priorities:

(1) Basic skills instruction in reading, mathematics, written and oral communication, and study skills.

(2) Counseling.

(3) Assessment of student needs.

(4) Academic tests and testing.

(5) College and university admissions policies and procedures.

(6) Student financial aid.

(7) Cultural enrichment programs.

(8) Career planning.

(9) Tutorial programs.

(10) Retention and graduation strategies.

(11) Support services for persons of limited proficiency in English.

(12) Support services for physically handicapped persons.

(13) Strategies for preparing students for doctoral studies.

(14) Project evaluation.

(15) Budget management.

(16) Personnel management.

(17) Reporting student and project performance.

(18) Coordinating project activities with other available resources and activities.

(19) General project management for new directors.

(b) The Secretary may consider an application for a Training Program project that does not address one of the established priorities if the applicant addresses another significant training need in the local area being served by the Special Programs.

(Authority: 20 U.S.C. 1070d, 1070d-1d)

[54 FR 7737, Feb. 22, 1989]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 642.40 Allowable costs.

Allowable project costs may include the following costs reasonably related to carrying out a Training Program project:

(a) Rental of space, if space is not available at a sponsoring institution and if the space is not owned by a sponsoring institution.

(b) Printing.

(c) Postage.

(d) Purchase or rental of equipment if approved in writing by the Secretary.

(e) Consumable supplies.

(f) Transportation costs for participants and training staff.

(g) Lodging and subsistence costs for participants and training staff.

(h) Transportation costs, lodging and subsistence costs and fees for consultants, if any.

(i) Honorariums for speakers who are not members of the staff or consultants to the project.

(j) Other costs that are specifically approved in advance and in writing by the Secretary.

(Authority: 20 U.S.C. 1070d, 1070d-1d)

§ 642.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) Research not directly related to the evaluation or improvement of the project.

(b) Construction, renovation, or remodeling of any facilities.

(c) Stipends, tuition fees, and other direct financial assistance to trainees other than those participating in internships.

(Authority: 20 U.S.C. 1070d, 1070d-1d)

PART 643—TALENT SEARCH PROGRAM

Subpart A—General

Sec.
643.1 Talent Search Program.
643.2 Eligible applicants.
643.3 Eligible project participants: General.
643.4 Eligible project participants: Selection requirements.
643.5 Regulations that apply to the Talent Search Program.
643.6 Definitions that apply to the Talent Search Program.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

643.10 Kinds of projects the Secretary assists under the Talent Search Program.

Subpart C—How Does One Apply for a Grant?

643.20 Assurances.

Subpart D—How Does the Secretary Make a Grant?

643.30 How the Secretary evaluates an application for a new award.
643.31 Selection criteria the Secretary uses.
643.32 Prior experience.

Subpart E—What Conditions Must Be Met by a Grantee?

643.40 Allowable costs.
643.41 Nonallowable costs.
643.42 Other requirements of a grantee.

AUTHORITY: 20 U.S.C. 1070d-1, unless otherwise noted.

SOURCE: 47 FR 7605, Feb. 19, 1982, unless otherwise noted.

Subpart A—General

§ 643.1 Talent Search Program.

The Talent Search Program provides Federal financial assistance to projects designed to assist participants to continue in and graduate from secondary schools and enroll in postsecondary educational programs.

(Authority: 20 U.S.C. 1070d, 1070d-1)

§ 643.2 Eligible applicants.

The following are eligible to apply for a grant to carry out a Talent Search project:

(a) Institutons of higher education.

(b) Public and private agencies and organizations.

(c) Secondary schools, in exceptional cases, if there are no other applicants capable of providing this program in the target areas to be served by the proposed projects.

(Authority: 20 U.S.C. 1070d, 1070d-1)

§ 643.3 Eligible project participants: General.

(a) An individual is eligible to participate in a Talent Search project if the individual—

(1)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands;

(2) Resides in the target area or attends a target school;

(3) Has completed the sixth grade or s at least 12 years old and is not older han 27. However, if there is no Educational Opportunity Center serving the ame target area as the Talent Search roject, an individual may be older han 27 and still be an eligible participant;

(4) In the case of an individual enrolled in or graduated from secondary chool, has potential for education at he postsecondary level, and needs one r more of the services provided by he project to undertake a program of postsecondary education, and, if necessary, to complete a program of secondary education;

(5) In the case of an individual who has not completed a program of education at the secondary or postsecondary level, has the ability to re-enter and complete a program of education at the secondary or postsecondary level, and needs one or more of the services provided by the project to re-enter and complete such a program; and

(6) Is not currently enrolled in a program of postsecondary education.

(b) *Veterans.* A veteran, regardless of age, is eligible to participate in a Talent Search project if he or she satisfies the eligibility requirements in paragraph (a) of this section other than the age requirement of paragraph (a)(3).

(Authority: 20 U.S.C. 1070d-1)

§ 643.4 Eligible project participants: Selection requirements.

(a) At least two-thirds of the eligible individuals an applicant proposes to serve under a Talent Search project must be low-income individuals who are potential first-generation college students.

(b) Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the first calendar year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

(c)(1)(i) Except as provided in paragraph (c)(1)(ii) of this section, a student qualifies as a "first generation college student" if neither of the student's parents received a baccalaureate degree.

(ii) If a student regularly resided with and received support from only one parent, the student qualifies as a first generation college student if that parent did not receive a baccalaureate degree.

(Authority: 20 U.S.C. 1070d-1)

(2) With respect to an individual 18 years and under, only the natural or adoptive parents who are currently re-

siding with the individual are considered the individual's parents in determining whether the individual meets the criterion of being a potential first-generation college student.

(3) With respect to an individual over 18, only the natural or adoptive parents who were residing with the individual before the individual's eighteenth birthday are considered the individual's parents in determining whether the individual meets the criterion of being a potential first-generation college student.

(Authority: 20 U.S.C. 1070d-1; House Rept. 96-520, 96 Cong. 1st Sess. p. 26 (1979) and Senate Rept. 96-733, 96 Cong. 2nd Sess. p. 26 (1980))

[47 FR 7605, Feb. 19, 1982, as amended at 52 FR 27774, July 23, 1987]

§ 643.5 Regulations that apply to the Talent Search Program.

The following regulations apply to the Talent Search Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 643.

(Authority: 20 U.S.C. 3474, 1070d, 1070d-1, 1221e-3)

[47 FR 7605, Feb. 19, 1982, as amended at 55 FR 21716, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21716, May 25, 1990, § 643.5(a) was amended by removing the word "and", and adding a comma in its place; and by adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence, effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 643.6 Definitions that apply to the Talent Search Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Public
Secondary school
Secretary
State
Supplies

(Authority: 20 U.S.C. 1070d, 1070d-1, 12
3)

(b) *Definitions that apply to*
part. The following definitions ap
to this part:

Act means the Higher Education
of 1965, as amended.

(Authority: 20 U.S.C. 1001 *et seq.*)

Institution of higher educat
means an educational institution
defined in sections 1201(a) and 481
the Higher Education Act of 1965,
amended.

(Authority: 20 U.S.C. 1141(a), 1088)

Postsecondary education means
program of education beyond the s
ondary school level.

(Authority: 20 U.S.C. 1070d, 1070d-1)

Target area means a discrete g
graphic area—as determined by t
applicant—that will be served by
Talent Search project.

(Authority: 20 U.S.C. 1070d, 1070d-1)

Target school means a seconda
school that will be served by a Tale
Search project.

(Authority: 20 U.S.C. 1070d, 1070d-1)

Veteran means a person who serv
on active duty as a member of th
Armed Forces of the United States—

(1) For a period of more than 1
days, any part of which occurred aft
January 31, 1955, and who was di
charged or released from active du
under conditions other than dishono
able; or

(2) After January 31, 1955, and wh
was discharged or released from activ

duty because of a service connected disability.

[47 FR 7605, Feb. 19, 1982, as amended at 52 FR 27774, July 23, 1987]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 643.10 Kinds of projects the Secretary assists under the Talent Search Program.

(a) The Secretary gives consideration to an applicant for a Talent Search project that, in its target area, proposes to—

(1) Identify qualified individuals with potential for education at the postsecondary level;

(2) Encourage qualified individuals to complete secondary school and undertake a program of postsecondary education;

(3) Publicize the availability of student financial assistance to persons who pursue a program of postsecondary education; and

(4) Encourage persons who have not completed programs of education at the secondary or postsecondary level, but who have the ability to complete those programs, to reenter the programs.

(b) A Talent Search project may provide tutorial services for a participant who—

(1) Is being encouraged to enter or reenter a program of postsecondary education; and

(2) Is not enrolled in an Upward Bound project.

(c) The Secretary will consider an application that proposes to carry out activities in addition to the ones listed in paragraphs (a) and (b) of this section if the activities support the purposes of the Talent Search Program.

(Authority: 20 U.S.C. 1070d, 1070d-1)

Subpart C—How Does One Apply for a Grant?

§ 643.20 Assurances.

An applicant shall submit, as part of its application, the following assurances:

(a) That the project will be located in a setting or settings that are accessible to participants;

(b) That, if the grantee is an institution of higher education, it will not use the project as a part of its recruitment program;

(c) That individuals participating in the project will not have access to services from another Talent Search project or from an Educational Opportunity Center; and

(d) That at least two-thirds of the participants to be served by the project will be low-income individuals who are, or will be, first-generation college students.

(Authority: 20 U.S.C. 1070d-1)

[47 FR 7605, Feb. 19, 1982, as amended at 52 FR 27774, July 23, 1987]

Subpart D—How Does the Secretary Make a Grant?

§ 643.30 How the Secretary evaluates an application for a new award.

(a) The Secretary evaluates an application on the basis of the criteria in § 643.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(b) For applicants that have conducted a Talent Search project within the three fiscal years prior to the fiscal year for which the applicant is applying, the Secretary considers the experience of the applicant on the basis of § 643.32.

(c) In the final selection of similarly rated applications, the Secretary considers the relative need for a project in the area the applicant proposes to serve as compared to the need in areas other applicants propose to serve.

(Authority: 20 U.S.C. 1070d, 1070d-1)

§ 643.31 Selection criteria the Secretary uses.

The Secretary uses the following criteria—in paragraphs (a) through (h)—to evaluate applications for new awards:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have traditionally been underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objective of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (points)

(1) The Secretary reviews each application for information that show that the project has an adequat budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activitie and

(ii) Costs are reasonable in relatio to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that show the quality of the evaluation plan fo the project.

(2) The Secretary looks for information that shows methods of evaluatio that are appropriate for the projec and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points

(1) The Secretary reviews each application for information that show that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need for the project.* (25 points)

(1) The Secretary reviews each application for information that shows need for a Talent Search project in the area the applicant plans to serve;

(2) The Secretary looks for information that shows—

(i) (6 points) The number and percentage of individuals who are eligible to be served by a Talent Search project including those who reside in the target area and those who attend target schools;

(ii) (7 points) The extent to which the target area lacks the services and activities that are provided by a Talent Search project or an Educational Opportunity Center;

(iii) (6 points) For each of the three preceding years, the estimated dropout rates for each of the target schools; and

(iv) (6 points) For each of the three preceding years, the estimated number and percentage of students from each target school who enrolled in postsecondary institutions.

(g) *Likelihood of success.* (20 points)

(1) The Secretary reviews each application for information that shows the likelihood of success of the proposed project.

(2) The Secretary looks for information that shows—

(i) (12 points) The extent to which the project is likely, in the target area—

(A) To increase the secondary school completion rate of participants;

(B) To increase the postsecondary school admission rate of participants; and

(C) To increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education; and

(ii) (8 points) The comprehensiveness of the applicant's plan for providing the services and activities listed in § 643.10.

(h) *Community support.* (15 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to involve the community in implementing the project.

(2) The Secretary looks for information that shows—

(i) (8 points) The extent to which the applicant plans to publicize and inform the target schools and residents of the target area of the services provided by the Talent Search project; and

(ii) (7 points) The extent to which the applicant has received and has included in its application written commitments by community organizations and other appropriate groups for the use of community and other resources to supplement authorized activities.

(Approved by the Office of Management and Budget under control number 1840-0549)

(Authority: 20 U.S.C. 1221e-3(a)(1); 1070d, 1070d-1)

[47 FR 7605, Feb. 19, 1982, as amended at 53 FR 49147, Dec. 6, 1988]

§ 643.32 Prior experience.

(a)(1) The Secretary gives priority to each applicant that has conducted a Talent Search project within the three fiscal years prior to the fiscal year for which the applicant is applying.

(2) To determine the number of priority points to be awarded each eligible applicant, the Secretary considers the applicant's prior experience of service delivery in accordance with paragraphs (b) and (c) of this section.

(b)(1) The Secretary may add from one to fifteen points to the point score obtained on the basis of the selection criteria in § 643.31, based on the applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (c) of this section.

(2) The maximum possible score for each criterion is indictated in the parentheses preceding the criterion.

(c) The Secretary—based on information contained in one or more of the following: Performance reports, audit reports, site visit reports, project evaluation reports, the previously funded application, the negotiated program plan(s), and the application under consideration—looks for information that shows—

(1) (3 points) The extent to which the project has served the number of participants it was funded to serve;

(2) (3 points) The extent to which the project was successful in encouraging project participants to complete high school;

(3) (3 points) The extent to which the project was successful in encouraging project participants to undertake a program of postsecondary education;

(4) (3 points) The extent to which the applicant has achieved other goals and objectives as stated in the previously funded application or negotiated program plan; and

(5) (3 points) The extent to which the applicant has met administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of the previously funded award.

(Approved by the Office of Management and Budget under control number 1840-0549)

(Authority: 20 U.S.C. 1070d, 1070d-1; Senate Rept. 96-733, 96 Cong. 1st Sess. p. 28)

[47 FR 24943, June 8, 1982; as amended at 53 FR 49147, Dec. 6, 1988]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 643.40 Allowable costs.

Allowable project costs not specifically covered by 34 CFR Part 74 may include the following costs reasonably related to carrying out a Talent Search project:

(a) Transportation and meal costs for participants and staff for—

(1) Approved visits to postsecondary educational institutions in the area;

(2) Participation in "College Days" activities; and

(3) Field trips to observe and meet with persons who are employed in various career fields and who can act as role models for participants.

(b) Purchase of testing materials.

(c) In-service training of project staff.

(d) Tutorial services if none are available to participants through an Upward Bound project in the target area.

(e) Rental of space if space is not available at the host institution and the space rented is not owned by the host institution.

(Authority: 20 U.S.C. 1070d, 1070d-1)

§ 643.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) Tuition, fees, stipends, or other forms of direct financial support for participants.

(b) Application fees for enrollment or financial aid.

(c) Lodging for project participants

(d) Duplication of services that are available to participants through—

(1) State, local, or private sources;

(2) The institution or agency sponsoring the project; or

(3) Other Federal programs.

(e) Research not directly related to the evaluation or improvement of the project.

(f) Purchase of major equipment unless the grantee demonstrates to the Secretary's satisfaction that purchase is less expensive than renting.

(g) Construction, renovation, or remodeling of any facilities.

(Authority: 20 U.S.C. 1070d, 1070d-1)

§ 643.42 Other requirements of a grantee.

Each grantee shall—

(a) Engage a full-time project director. However, the Secretary may waive the full-time requirement as specified in EDGAR, 34 CFR 75.511; and

(b)(1) Determine the eligibility of each participant at the time that the individual is selected to participate in the project.

(2) The grantee does not have to revalidate a participant's eligibility after this time.

(Authority: 20 U.S.C. 1070d, 1070d-1)

PART 644—EDUCATIONAL OPPORTUNITY CENTERS PROGRAM

Subpart A—General

Sec.

644.1 The Educational Opportunity Centers Program.
644.2 Eligible applicants.
644.3 Eligible project participants: General.
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644.40 Allowable costs.
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AUTHORITY: 20 U.S.C. 1070d-1c.

SOURCE: 47 FR 2258, Jan. 14, 1982, unless otherwise noted.

Subpart A—General

§ 644.1 The Educational Opportunity Centers Program.

The Educational Opportunity Centers Program provides Federal financial assistance to establish and operate Educational Opportunitity Centers. Each center is designed to provide participants with—

(a) Information concerning financial and academic assistance available for individuals desiring to pursue a program of postsecondary education; and

(b) Assistance in applying for admission to institutions at which a program of postsecondary education is offered, including preparing applications for use by admissions and financial aid officers.

(Authority: 20 U.S.C. 1070d, 1070d-1c)

§ 644.2 Eligible applicants.

The following are eligible to apply for a grant to establish and operate an Educational Opportunity Center:

(a) Institutions of higher education.

(b) Public and private agencies and organizations.

(c) Secondary schools, in exceptional cases, if there are no other applicants capable of providing this program in the target areas to be served by the proposed project.

Authority: 20 U.S.C. 1070d, 1070d-1c)

644.3 Eligible project participants: General.

An individual is eligible to participate in an Educational Opportunity Center if the individual—

(a)(1) Is a citizen or national of the Jnited States;

(2) Is a permanent resident of the Jnited States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Resides in the target area;

(c) Is at least 19 years old, except that if there is no Talent Search project serving the same target area as the Educational Opportunity Center, an individual may be younger than 19;

(d) Needs one or more of the services provided by the center in order to pursue a program of postsecondary education; and

(e) Expresses a desire to pursue or is pursuing a program of postsecondary education.

(Authority: 20 U.S.C. 1070d, 1070d-1c)

§ 644.5 Regulations that apply to the Educational Opportunity Centers Program.

The following regulations apply to the Educational Opportunity Centers Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 644.

(Authority: 20 U.S.C. 1221e-3(a)(1))

[47 FR 2258, Jan. 14, 1982, as amended at 55 FR 21716, May 25, 1990

EFFECTIVE DATE NOTE: At 55 FR 21716, May 25, 1990, § 644.5(a) was amended by removing the word "and", and adding a period in its place, and by adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence, effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 644.6 Definitions that apply to the Educational Opportunity Centers Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Public
Secondary school
Secretary
State
Supplies

(b) *Definitions that apply to this part.* The following definitions apply to this part:

Act means the Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1001 *et seq.*)

First-generation college student or a *potential first-generation college student* means—

(1) An individual both of whose parents did not complete a baccalaureate degree; or

(2) In the case of any individual who regularly resided with and received support from only one parent, an individual whose only such parent did not complete a baccalaureate degree.

Institution of higher education means an educational institution as defined in sections 1201(a) and 481 of the Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1141(a), 1088)

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

Postsecondary education means a program of education beyond the high school level.

(Authority: 20 U.S.C. 1070d, 1070d-1c)

Target area means a discrete geographic area—as determined by the applicant—that will be served by an Educational Opportunity Center.

(Authority: 20 U.S.C. 1070d, 1070d-1c)

Veteran means a person who served on active duty—

(1) For a period of more than 180 days, any part of which occurred after January 31, 1955, and was discharged or released therefrom under conditions other than dishonorable; or

(2) After January 31, 1955, and was discharged or released therefrom because of a service connected disability.

(Authority: 38 U.S.C. 1652(a))

[47 FR 2258, Jan. 14, 1982, as amended at 52 FR 28420, July 29, 1987]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 644.10 Kinds of projects the Secretary assists under the Educational Opportunity Centers Program.

(a) The Secretary gives consideration to an application for an Educational Opportunity Center that, in its target area, proposes to—

(1) Collect and disseminate information regarding available financial and academic assistance to participants desiring to pursue a program of postsecondary education; and

(2) Assist participants in preparing applications and other necessary materials—

(i) For admission to postsecondary institutions; and

(ii) For financial assistance at these institutions.

(b) The Secretary gives consideration to an applicant that, in addition to the activities listed in paragraph (a) of this section, proposes to provide tutoring and counseling for project participants who are not enrolled in an Upward Bound or a Student Support Services project that provides tutoring or counseling.

(c) The Secretary will consider an application that proposes to carry out activities in addition to the ones listed in paragraphs (a) and (b) of this section if the activities support the purposes of the Educational Opportunity Centers Program.

(Authority: 20 U.S.C. 1070d, 1070d-1c)

[47 FR 2258, Jan. 14, 1982, as amended at 52 FR 28420, July 29, 1987]

Subpart C—How Does One Apply for a Grant?

§ 644.20 Assurances.

(a) If the applicant is an institution of higher education, the applicant shall submit as part of its application an assurance that it will not use the center as a part of its recruitment program.

(b) An applicant shall submit as part of its application an assurance that individuals participating in the project proposed in the application do not have access to services from another Educational Opportunity Center or from a Talent Search project.

(c) An applicant shall submit as part of its application an assurance that at least two-thirds of the participants to be served by the project will be low-income individuals who are, or will be, first-generation college students.

(Authority: 20 U.S.C. 1070d, 1070d-1c)

[47 FR 2258, Jan. 14, 1982, as amended at 52 FR 28420, July 29, 1987]

Subpart D—How Does the Secretary Make a Grant?

§ 644.30 How the Secretary evaluates an application for a new award.

(a) The Secretary evaluates an application on the basis of the criteria in § 644.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(b) For applicants that have conducted an Educational Opportunity Center project within the three fiscal years prior to the fiscal year for which the applicant is applying, the Secretary considers the experience of the applicant on the basis of § 644.32.

(c) In the final selection of similarly rated applications, the Secretary considers the relative need for a project in the area the applicant proposes to serve as compared to the need in areas other applicants propose to serve.

(Authority: 20 U.S.C. 1070d, 1070d-1c)

§ 644.31 Selection criteria the Secretary uses.

The Secretary uses the following criteria—in paragraphs (a) through (h)—to evaluate applications:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need for the center.* (25 points)

(1) The Secretary reviews each application for documented evidence that a need for an Educational Opportunity Center exists in the target area the applicant plans to serve.

(2) The Secretary looks for information that shows—

(i) (9 points) The number and percentage of individuals who are eligible to be served by an Educational Opportunity Center who reside in the target area;

(ii) (9 points) The extent to which the target area lacks the services and activities to be provided by the proposed Educational Opportunity Center;

(iii) (2 points) The estimated number of veterans in the target area who need services of an Educational Opportunity Center to pursue postsecondary education; and

(iv) (5 points) Other data that show the need of the adults in the target area for services that are provided by an Educational Opportunity Center.

(g) *Likelihood of success.* (20 points)

(1) The Secretary reviews each application for information that shows the likelihood of success.

(2) The Secretary looks for information that shows—

(i) (12 points) The comprehensiveness of the applicant's plan for carrying out the activities under § 644.10(a), those activities under § 644.10(b) that the applicant chooses to propose, and any other activities that the applicant proposes that relate to the goal of the program; and

(ii) (8 points) The extent to which the activities that the applicant proposes are likely to result in increases in the enrollment and retention in and successful completion of postsecondary educational programs by program participants.

(h) *Community participation and coordination.* (15 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to use and coordinate community and other resources.

(2) The Secretary looks for information that shows—

(i) (3 points) The extent to which representatives of the community, secondary schools, and postsecondary schools have participated in the formulation of the application;

(ii) (4 points) The extent to which the applicant has received and has included in the application written commitments by community organizations and other appropriate groups for the use of community and other resources to supplement authorized activities;

(iii) (4 points) The center's defined relationship with Talent Search, Upward Bound, and Special Services for Disadvantaged Students projects n the target area and similar programs and services in the target area n terms of—

(A) Coordinating services to individuals who participate in more than one rogram;

(B) Providing services not otherwise vailable from other projects and pro- rams; and

(C) Avoiding duplication of services; nd

(iv) (4 points) The degree to which he center is likely to develop relationhips with a variety of institutions ofering postsecondary educational prorams to coordinate the resources and fforts of those institutions in admitng disadvantaged persons.

pproved by the Office of Management d Budget under control number 1840- 65)

uthority: 20 U.S.C. 1221e-3(a)(1); 1070d, 70d-1c)

7 FR 2258, Jan. 14, 1982, as amended at 53 R 49147, Dec. 6, 1988]

644.32 Prior experience.

(a)(1) The Secretary gives priority to ch applicant that has conducted an ucational Opportunity Centers oject within the three fiscal years ior to the fiscal year for which the plicant is applying.

2) To determine the number of priity points to be awarded each eligie applicant, the Secretary considers e applicant's prior experience of vice delivery in accordance with ragraphs (b) and (c) of this section.

b)(1) The Secretary may add from e to fifteen points to the point score tained on the basis of the selection teria in § 644.31, based on the applint's success in meeting the adminisative requirements and programmatic objectives of paragraph (c) of this section.

(2) The maximum possible score for each criterion is indicated in the parentheses preceding the criterion.

(c) The Secretary, based on information contained in one or more of the following: Performance reports, audit reports, site visit reports, project evaluation reports, the previously funded application, the negotiated program plan(s), and the application under consideration—looks for information that shows—

(1) (3 points) The extent to which the project has served the number of participants it was funded to serve;

(2) (3 points) The extent to which the center has disseminated, in accordance with its negotiated program plan, information concerning financial and academic assistance available for individuals desiring to pursue a program of postsecondary education;

(3) (3 points) The extent to which the center has specifically assisted participants in applying for admission to postsecondary educational programs, including assisting participants in preparing necessary applications for use by admissions and financial aid officers;

(4) (3 points) The extent to which the applicant has achieved other goals and objectives as stated in the previously funded application or negotiated program plan; and

(5) (3 points) The extent to which the applicant has met the administrative requirements—including recordkeeping, reporting, matching funds, and financial accountability—under the terms of the previously funded award.

(Authority: 20 U.S.C. 1070d, 1070d-1c; Senate Rept. 96-733, 96 Cong. 1st Sess. p. 28)

[47 FR 24944, June 8, 1982]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 644.40 Allowable costs.

Allowable project costs not specifically covered by 34 CFR Part 74 may include the following costs reasonably related to operating an Educational Opportunity Center:

(a) Transportation and meal costs for participants and staff for—

(1) Approved visits to postsecondary educational institutions in the area;

(2) Participation in "College Days" activities; and

(3) Field trips to observe and meet with persons who are employed in various career fields and who can act as role models for participants.

(b) Purchase of testing materials.

(c) In-service training of project staff.

(d) Tutorial and counseling services if none are available to participants through an Upward Bound or a Special Services project in the target area.

(e) Rental of space if space is not available at the sponsoring institution and the space rented is not owned by the sponsoring institution.

(Authority: 20 U.S.C. 1070d, 1070d-1c)

§ 644.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) Tuition, fees, stipends, or other forms of direct financial support for participants.

(b) Application fees for enrollment or financial aid.

(c) Lodging for project participants.

(d) Duplication of services that are available to participants through—

(1) State, local, or private sources;

(2) The institution or agency sponsoring the project; or

(3) Other Federal programs.

(e) Research not directly related to the evaluation or improvement of the project.

(f) The purchase of major equipment, unless the grantee demonstrates to the Secretary's satisfaction that purchase is less expensive than renting.

(g) The construction, renovation, or remodeling of any facilities.

(Authority: 20 U.S.C. 1070d, 1070d-1c)

§ 644.43 Other requirements of a grantee.

Each grantee shall—

(a) Design and implement an evaluation mechanism to test the effectiveness of the center's progress in meeting the approved goals and objectives;

(b) Engage a full-time project director. However, the Secretary may waive the full-time requirement as specified in EDGAR, 34 CFR 75.511; and

(c)(1) Determine the eligibility of each participant at the time that individual is selected to participate in the project.

(2) The grantee does not have to revalidate a participant's eligibility after this time.

(Authority: 20 U.S.C. 1070d, 1070d-1c)

PART 645—UPWARD BOUND PROGRAM

Subpart A—General

Sec.

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645.3 Eligible project participants: general.
645.4 Eligible project participants: selection requirements.
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AUTHORITY: 20 U.S.C. 1070d, 1070d-1a, unless otherwise noted.

SOURCE: 47 FR 9159, Mar. 3, 1982, unless otherwise noted.

Subpart A—General

§ 645.1 Upward Bound Program.

The Upward Bound Program provides Federal financial assistance to projects designed to generate in participants skills and motivation necessary for success in education beyond high school.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

§ 645.2 Eligible applicants.

The following are eligible to apply for a grant to carry out an Upward Bound project:

(a) Institutions of higher education.

(b) Public and private agencies and organizations.

(c) Secondary schools, in exceptional cases, if there are no other applicants capable of providing this program in the target areas to be served by the proposed projects.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

§ 645.3 Eligible project participants: general.

(a) An individual is eligible to participate in an Upward Bound project if the individual—

(1)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands;

(2) Is, at the time of initial selection, a potential first-generation college student or a low-income individual;

(3) Has a need for academic support, as determined by the grantee, in order to pursue successful a program of education beyond high school; and

(4) At the time of initial selection, has completed the eighth grade but has not entered the twelfth grade and is at least 13 years old but not older than 19. However, the project may serve individuals who are less than 13 or have not completed the eighth grade if the secondary schools in the project's target area have an unusually high dropout rate. In addition, the project may serve individuals who have entered the twelfth grade if there are no eligible unserved individuals in the project's target area who are in the eighth to the eleventh grades.

(b) *Veterans.* A veteran, regardless of age, is eligible to participate in an Upward Bound project if he or she satisfies the eligibility requirements in paragraph (a) of this section other than the requirements of paragraph (a)(4) of this section.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

[47 FR 9159, Mar. 3, 1982, as amended at 52 FR 27776, July 23, 1987]

§ 645.4 Eligible project participants: selection requirements.

(a) At least two-thirds of the eligible individuals the applicant proposed to serve under an Upward Bound project must, at the time of initial selection, be low-income individuals who are also potential first-generation college students.

(b) The remaining individuals the applicant proposes to serve must, at the time of initial selection, qualify as either low-income individuals or potential first-generation college students.

(c) A "low-income individual" means an individual who family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

(d)(1)(i) Except as provided in paragraph (d)(1)(ii) of this section, a student qualifies as a "first-generation college student" if neither of the student's parents received a baccalaureate degree.

(ii) If a student regularly resided with and received support for only one parent, the student qualifies a a first-generation college student if that parent did not receive a baccalaureate degree.

(2) With respect to an individual 18 years of age and under, only the natural or adoptive parents who are cur-

rently residing with the individual are considered the individual's parents in determining whether the individual meets the criterion of being a potential, first-generation college student.

(3) With respect to an individual over 18, only the natural or adoptive parents who were residing with the individual before the individual's eighteenth birthday are considered the individual's parents in determining whether the individual meets the criterion of being a potential, first-generation college student.

(Authority: 20 U.S.C. 1070d, 1070d-1a; House Rept. 96-520, 96th Congress 1st. Sess. p. 26 (1979) and Senate Rept. 96-733, 96th Cong. 2nd Sess. p. 26 (1980))

[47 FR 9159, Mar. 3, 1982, as amended at 52 FR 27776, July 23, 1987]

§ 645.5 Regulations that apply to the Upward Bound Program.

The following regulations apply to the Upward Bound Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs), in 34 CFR Part 77 (Definitions), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 645.

(Authority: 20 U.S.C. 3474, 1070d and 1070d-1a)

[47 FR 9159, Mar. 3, 1982, as amended at 55 FR 21716, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21716, May 25, 1990, § 645.5(a) was amended by removing the word "and", and adding a comma in its place and by adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence, effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 645.6 Definitions that apply to the Upward Bound Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Public
Secondary school
Secretary
State
Supplies

(b) *Definitions that apply to th part.* The following definitions app to this part:

Act means the Higher Education A of 1965, as amended.

(Authority: 20 U.S.C. 1001 *et seq.*)

Institution of higher educatio means an educational institution defined in section 1201(a) and 481 the Higher Education Act of 1965, amended.

(Authority: 20 U.S.C. 1141(a); 1088)

Limited proficiency in English, wit reference to an individual, means individual—

(1)(i) Who was not born in th United States;

(ii) Whose native language is othe than English;

(iii) Who comes from an enviro ment in which a language other tha English is most relied upon for com munication; or

(iv) Who is an American Indian Alaskan Native student and come from an environment in which a la guage other than English has had significant impact on his or her leve of proficiency in the English languag and

(2) Who, as a result of the circum stances described in paragraph (1) this definition, is unable to learn suc cessfully in classrooms in which th language of instruction is English be cause he or she cannot adequately un derstand, speak, read, or write the English language.

(Authority: 20 U.S.C. 3223(a)(1))

Postsecondary education means a program of education beyond the secondary school level.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

Target area means a discrete geographic area—as determined by the applicant—that is or would be served by an Upward Bound project.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

Target school means a secondary school that serves students residing in a target area and that is or would be served by an Upward Bound project.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

Veteran means a person who served on active duty as a member of the Armed Forces of the United States—

(1) For a period of more than 180 days, any part of which occurred after January 31, 1955, and who was discharged or released from active duty under conditions other than dishonorable; or

(2) After January 31, 1955, and who was discharged or released from active duty because of a service connected disability.

[47 FR 9159, Mar. 3, 1982, as amended at 52 FR 27776, July 23, 1987]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 645.10 Kinds of projects the Secretary assists under the Upward Bound Program.

(a) The Secretary assists two kinds of projects under the Upward Bound Program:

(1) Regular Upward Bound projects that provide services to qualified secondary school students.

(2) Veterans Upward Bound projects that provide services to veterans.

(b) Regular Upward Bound projects must have both an academic year component, as described in § 645.11, and a summer component, as described in § 645.12.

(c) An Upward Bound project, including a Veterans Upward Bound Project, may provide services such as—

(1) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success in education beyond high school;

(2) Personal counseling;

(3) Academic advice and assistance in high school course selection;

(4) Tutorial services;

(5) Exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

(6) Activities designed to acquaint youths participating in the project with the range of career options available to them;

(7) Instruction designed to prepare youths participating in the project for careers in which persons from disadvantaged backgrounds are particularly underrepresented;

(8) On-campus residential programs; and

(9) Programs and activities as described in paragraphs (c) (1) through (8) of this section that are specially designed for individuals with limited proficiency in English.

(d) The Secretary does not restrict activities under this program to the optional activities specified in paragraph (c) of this section if the activities support the purpose of the Upward Bound Program.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

§ 645.11 Academic year component.

(a) During the academic year, regular Upward Bound projects shall provide to participants on a weekly basis services such as those described in § 645.10(c).

(b) To the extent possible, an Upward Bound project shall schedule services so that the project's activities do not interfere with a participant's full participation in the academic and nonacademic activities at the participant's secondary school.

(c) If the project location or the project staff are not readily accessible to participants because of distance or lack of transportation, the grantee may, with the Secretary's permission, provide services to participants every two weeks.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

§ 645.12 Summer component.

(a)(1) Regular Upward Bound projects shall provide a summer component of six weeks duration.

(2) The Secretary may approve a shorter or longer summer component if the applicant can demonstrate that a shorter or longer session will not hinder the effectiveness of the project nor prevent the project from achieving its stated goals and objectives.

(b) The summer component may be either a residential program or a nonresidential program.

(c) The summer component shall be designed to simulate a college-going experience for the participants.

(d) During the summer component, a project shall provide to participants on a daily basis services such as those described in § 645.10(c).

(e) The project may offer a bridge summer component for those Upward Bound participants who have graduated from secondary school and intend to enroll at a postsecondary institution in the upcoming fall semester. The bridge summer component provides participants with services and activities that aid in the transition from high school to postsecondary education.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

§ 645.13 Veterans projects.

(a) The Secretary may fund Upward Bound projects for veterans.

(b) In addition to the activities described in § 645.10(c), a Veterans Upward Bound project may—

(1) Provide intensive basic skills development in those academic subjects required for the successful completion of a high school equivalency program, if necessary, and for admission to postsecondary institutions;

(2) Provide short-term remedial-refresher courses for those veterans who are high school graduates but who have delayed pursuing postsecondary education. If the grantee is an institution of higher education, these courses may not duplicate courses otherwise available to veterans at the institution; and

(3) Assist veterans in securing services from other locally available resources such as the Veterans Administration, State veterans agencies, veterans associations, and other State and local agencies that serve veterans.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

§ 645.14 Project size.

(a) Each regular Upward Bound project shall serve between 50 and 150 participants.

(b) Each Veterans Upward Bound project shall serve a minimum of 120 veterans during a project year.

(c) The Secretary may waive the requirements of paragraphs (a) and (b) of this section if the applicant can demonstrate that the project will be effective and consistent with the goals of the program.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 645.30 How the Secretary evaluates an application for a new award.

(a) The Secretary evaluates an application on the basis of the criteria in § 645.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(b) For applicants that have conducted an Upward Bound project within the three fiscal years prior to the fiscal year for which the applicant is applying, the Secretary considers the experience of the applicant on the basis of § 645.32.

(c) In the final selection of similarly rated applications, the Secretary considers the relative need for a project in the area the applicant proposes to serve as compared to the need in areas other applicants propose to serve.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

§ 645.31 Selection criteria the Secretary uses.

The Secretary uses the following criteria—in paragraphs (a) through (h)—to evaluate applications:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need for the project.* (25 points)

(1) The Secretary reviews each application for information that shows a need for an Upward Bound project in the area the applicant plans to serve.

(2) (9 points) The Secretary looks for information that shows the extent to which the target area lacks the services and activities provided by a regular Upward Bound or a Veterans Upward Bound project.

(3) (16 points) To determine the extent of the need for a regular Upward Bound project, the Secretary also considers—

(i) The estimated number of students enrolled in target schools who are from low-income families;

(ii) The estimated number and percentage of those types of students who subsequently enroll in postsecondary education;

(iii) The ratio of secondary school counselors to students in the target schools; and

(iv) The dropout rate of students from the target schools.

(4) (16 points) To determine the extent of the need for a Veterans Upward Bound project, the Secretary also considers the number of veterans in the target area who are eligible for and need Upward Bound services.

(g) *Likelihood of success.* (20 points)

(1) The Secretary reviews each application for information that shows the likelihood of success of the proposed project.

(2) (8 points) The Secretary looks for information that shows the extent to which the project is likely to—

(i) Generate academic skills and motivation that will enable the participants to complete a secondary educational program and to subsequently gain admission to postsecondary institutions; and

(ii) Enable the participants to attain those academic skills such as reading, writing, mathematics, and study skills, that are essential for postsecondary education and in which participants are deficient.

(3) (12 points) To determine the likelihood of success, the Secretary looks for information that shows the comprehensiveness of the applicant's plan for—

(i) Identifying and selecting eligible participants;

(ii) Diagnosing each participant's need for academic support in order to successfully pursue a program of postsecondary education;

(iii) Developing a plan of program support to improve each participant's skills; and

(iv) Providing activities and services, such as those listed in § 645.10(c) that relate to the goals of the Upward Bound Program.

(h) *Institutional and community support.* (15 points)

(1) The Secretary reviews each application for information that shows how the applicant plans to increase the awareness of, and gain the support of, the institution and the local community in fulfilling project goals.

(2) The Secretary looks for information that shows—

(i) (10 points) The extent to which the applicant has identified institutional, community, and other resources to supplement authorized activities; and

(ii) (5 points) The existence of a plan to inform the residents of the target area, target schools, and the institutional community of—

(A) The goals and objectives of the Upward Bound project; and

(B) The selection criteria for acceptance into the project.

(Authority: 20 U.S.C. 3474; 1070d, 1070d-1a)

§ 645.32 Prior experience.

(a)(1) The Secretary gives priority to each applicant that has conducted an Upward Bound project within the three fiscal years prior to the fiscal year for which the applicant is applying.

(2) To determine the number of priority points to be awarded each eligible applicant, the Secretary considers the applicant's prior experience of service delivery in accordance with paragraphs (b) and (c) of this section.

(b)(1) The Secretary may add from one to fifteen points to the point score obtained on the basis of the selection criteria in § 645.31, based on the applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (c) of this section.

(2) The maximum possible score for each criterion is indicated in the parentheses preceding the criterion.

(c) The Secretary—based on information contained in one or more of the following: Performance reports, audit reports, site visit reports, project evaluation reports, the previously funded application, the negotiated program plan(s), and the application under consideration—looks for information that shows—

(1) (3 points) The extent to which the project has served the number of participants it was funded to serve;

(2) (3 points) The extent to which the project has generated the skills and motivation in project participants that are necessary for admission to an educational program beyond high school;

(3) (3 points) The extent to which the project participants, upon completion of project services, undertake a program of postsecondary education;

(4) (3 points) The extent to which the applicant has achieved other goals and objectives as stated in the previously funded application or negotiated program plan; and

(5) (3 points) The extent to which the applicant has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of the previously funded award.

(Authority: 20 U.S.C. 1070d, 1070d-1a; Senate Rept. 96-733, 96 Cong. 1st Sess. p. 28)

[47 FR 24944, June 8, 1982]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 645.40 Allowable costs.

Allowable project costs not specifically covered by 34 CFR Part 74 may include the following costs reasonably related to carrying out an Upward Bound Project:

(a) In-service training of project staff.

(b) Rental of space if space is not available at the host institution and the space rented is not owned by the host institution.

(c) For participants in an Upward Bound residential summer component, room and board—computed on a weekly basis—not to exceed the weekly rate the host institution charges regularly enrolled students at the institution.

(d) Room and board for those persons responsible for dormitory supervision of participants during a residential summer component.

(e) Other means for Upward Bound participants while participating in project activities.

(f) Student activities fees for Upward Bound participants.

(g) Admission fees, transportation, and other costs necessary to participate in field trips, attend educational activities, visit museums, and attend other events that have as their purpose the intellectual, social, and cultural development of participants.

(h) Costs for one project-sponsored banquet or ceremony.

(i) Tuition costs for postsecondary credit courses at the host institution for participants in the bridge summer component.

(j)(1) Accident insurance to cover any injuries to a project participant while participating in a project activity; and

(2) Medical insurance and health service fees for the project participants while participating full-time in the summer component.

(k) Courses in English language instruction for participants with limited proficiency in English if these classes are limited to project participants and if these classes are not otherwise available at a target school.

(l) Transportation costs of participants for regularly scheduled project activities.

(m) Transportation, meals, and overnight accommodations for staff members when they are required to accompany participants in project activities, such as field trips.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

§ 645.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) Duplication of services that are available to participants through—

(1) State, local, or private sources;

(2) The institution or agency sponsoring the project; or

(3) Other Federal programs.

(b) Research not directly related to the evaluation or improvement of the project.

(c) Purchase of any equipment, unless the grantee demonstrates to the Secretary's satisfaction that purchase is less expensive than renting.

(d) Meals for staff except as provided in § 645.40(d) and (m) and in paragraph (f) of this section.

(e) Clothing.

(f) Room and board for administrative and instructional staff personnel who do not have responsibility for dormitory supervision of project participants during a residential summer component unless these costs are approved by the Secretary.

(g) Room and board for participants in Veterans Upward Bound projects.

(h) Construction, renovation, or remodeling of any facilities.

(i) Tuition, stipends, or any other form of student financial support for project staff.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

§ 645.42 Stipends.

(a) An Upward Bound project may provide stipends for all participants who participate on an essentially full-time basis.

(b) In order to receive the stipend, the participant must show evidence of satisfactory participation in activities of the project including—

(1) Regular attendance; and

(2) Performance in accordance with standards established by the grantee and described in the application.

(c) The grantee may prorate the amount of the stipend according to the number of scheduled sessions in which the student participated.

(d) The following rules govern the amounts of stipends a grantee is permitted to provide:

(1) *For regular Upward Bound projects*—

(i) For the academic year component, the stipend may not exceed $40 per month; and

(ii) For the summer component the stipend may not exceed $60 per month.

(2) *For veterans Upward Bound projects*, the stipend may not exceed $40 per month.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

§ 645.43 Other requirements of a grantee.

Each grantee shall—

(a) Engage a full-time project director. However, the Secretary may waive the full-time requirement as specified in EDGAR, 34 CFR 75.511; and

(b)(1) Determine the eligibility of each participant at the time that individual is selected to participate in the project.

(2) The grantee does not have to revalidate a participant's eligibility after this time.

(Authority: 20 U.S.C. 1070d, 1070d-1a)

PART 646—STUDENT SUPPORT SERVICES

Subpart A—General

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AUTHORITY: 20 U.S.C. 1070, 1070d-1b.

SOURCE: 47 FR 9150, Mar. 3, 1982, unless otherwise noted.

Subpart A—General

§ 646.1 Student support services.

The Support Services for Disadvantaged Students Program—referred to in these regulations as the Support Services program—provides Federal financial assistance to projects designed to assist qualified postsecondary students through services such as those described in § 646.10.

(Authority: 20 U.S.C. 1070d, 1070d-1b)

[47 FR 9150, Mar. 3, 1982, as amended at 52 FR 27906, July 24, 1987]

§ 646.2 Eligible applicants.

Institutions of higher education are eligible to apply for grants to carry out Support Services projects.

(Authority: 20 U.S.C. 1070d, 1070d-1b)

[47 FR 9150, Mar. 3, 1982, as amended at 52 FR 27906, July 24, 1987]

§ 646.3 Eligible project participants: General.

An individual is eligible to participate in a Support Services project if the individual—

(a)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Is enrolled or accepted for enrollment in the next enrollment period at the grantee institution;

(c) Has a need for academic support, as determined by the grantee, in order to pursue successfully a postsecondary educational program; and

(d) Is, at the time of initial selection—

(1) A low-income individual;

(2) A first-generation college student; or

(3) Physically handicapped.

(Authority: 20 U.S.C. 1070d, 1070d-1b)

[47 FR 9150, Mar. 3, 1982, as amended at 52 FR 27906, July 24, 1987]

§ 646.4 Eligible project participants: Selection requirements.

(a) At least two-thirds of the eligible individuals an applicant proposes to serve under a Support Services project must be—

(1) Physically handicapped; or

(2) Low-income individuals who are first-generation college students.

(b) The remaining individuals the applicant proposes to serve under the Support Services project must be—

(1) Physically handicapped;

(2) Low-income individuals; or

(3) First-generation college students.

(c) A "low-income individual" means an individual whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

(d)(1)(i) Except as provided in paragraph (d)(1)(ii) of this section, a student qualifies as a "first generation college student" if neither of the student's parents received a baccalaureate degree.

(ii) If a student regularly resided with and received support from only one parent, the student qualifies as a first generation college student if that parent did not receive a baccalaureate degree.

(2) With respect to individuals 18 years of age and under, only the natural or adoptive parents who are currently residing with the individual are considered the individual's parents in determining whether the individual meets the criterion of being a first-generation college student.

(3) With respect to individuals over 18, only the natural or adoptive parents who were residing with the individual before the individual's eighteenth birthday are considered the individual's parents in determining whether the individual meets the criterion of being a first-generation college student.

(e) "Physically handicapped," with reference to an individual, means a person who, because of a physical disability, needs specifically designed instructional materials or programs, modified physical facilities, or related services in order to participate fully in the experience and opportunities offered by postsecondary educational institutions.

(Authority: 20 U.S.C. 1070d, 1070d-1b; House Rept. 96-520, 96 Cong. 1st Sess. p. 26 (1979) and Senate Rept. 96-733, 96 Cong. 2nd Sess. p. 26 (1980))

[47 FR 9150, Mar. 3, 1982, as amended at 52 FR 27906, July 24, 1987]

§ 646.5 Regulations that apply to the Support Services program.

The following requirements apply to the Support Services program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 646.

(Authority: 20 U.S.C. 1070d, 1070d-1b and 3474)

[47 FR 9150, Mar. 3, 1982, as amended at 52 FR 27906, July 24, 1987; 55 FR 21716, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21716, May 25, 1990, § 646.5(a) was amended by removing the word "and", and adding a comma in its place and by adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence, effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 646.6 Definitions that apply to the Support Services program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Public
Secretary
State
Supplies

(Authority: 20 U.S.C. 1070d, 1070d-1b, 1221e-3)

(b) *Definitions that apply to this part.* The following definitions apply to this part:

Act means the Higher Education Act of 1965, as amended. (20 U.S.C. 1001 et seq.)

Institution of higher education means an educational institution as defined in sections 1201(a) and 481 of the Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1141(a), 1088)

Limited proficiency in English, with reference to an individual, means an individual—

(1)(i) Who was not born in the United States;

(ii) Whose native language is other than English;

(iii) Who comes from an environment in which a language other than English is most relied upon for communication; or

(iv) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant impact on his or her level of proficiency in the English language; and

(2) Who, as a result of the circumstances described in paragraph (b)(1) of this definition, is unable to learn successfully in classrooms in which the language of instruction is English because he or she cannot adequately understand, speak, read or write the English language.

(Authority: 20 U.S.C. 3223(a)(1))

[47 FR 9150, Mar. 3, 1982, as amended at 52 FR 27906, July 24, 1987]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 646.10 Kinds of projects the Secretary assists under the Support Services program.

(a) The Secretary gives consideration to an application for a Support Services project that proposes to provide services such as—

(1) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success beyond high school;

(2) Personal counseling;

(3) Academic advice and assistance in course selection;

(4) Tutorial services, counseling and peer counseling;

(5) Exposure to cultural events and academic programs not usually available to disadvantaged students;

(6) Activities designed to acquaint students participating in the project with the range of career options available to them;

(7) Activities designed to assist students participating in the project in securing admission and financial assistance for enrollment in graduate and professional programs; and

(8) Activities designed to assist students currently enrolled in two-year institutions in securing admission and financial assistance for enrollment in a four-year program of postsecondary education; and

(9) Programs and activities as described in paragraphs (a)(1) through (8) of this section which are specially designed for students of limited proficiency in English.

(b) The Secretary will consider an application that proposes to carry out activities in addition to the ones listed in paragraph (a) of this section if the activities support the purposes of the Support Services program.

(Authority: 20 U.S.C. 1070d, 1070d-1b)

[47 FR 9150, Mar. 3, 1982, as amended at 52 FR 27906, 27907, July 24, 1987]

Subpart C—How Does One Apply for a Grant?

§ 646.20 Assurances.

An applicant shall submit as part of its application an assurance that each participant enrolled in the project will receive sufficient financial assistance to meet the student's full financial need.

(Authority: 20 U.S.C. 1070d, 1070d-1b)

Subpart D—How Does the Secretary Make a Grant?

§ 646.30 How the Secretary evaluates an application for a new award.

(a) The Secretary evaluates an application on the basis of the criteria in § 646.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(b) For applicants that have conducted a Support Services project within the three fiscal years prior to the fiscal year for which the applicant is applying, the Secretary considers the experience of the applicant on the basis of § 646.32.

(c) In the final selection of similarly rated applications, the Secretary considers the relative need for a project in the applicant institution as compared to the need in other applicant institutions.

(Authority: 20 U.S.C. 1070d, 1070d-1b)

[47 FR 9150, Mar. 3, 1982, as amended at 52 FR 27906, July 24, 1987]

§ 646.31 Selection criteria the Secretary uses.

The Secretary uses the criteria in paragraphs (a) through (h) of this section to evaluate applications for new awards:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups; and

(B) Women.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need for the project at the applicant institution.* (25 points)

(1) The Secretary reviews each application for information that shows that a need for a Support Services project exists at the institution applying for a grant.

(2) The Secretary looks for information that shows—

(i) (9 points) The number and percentage of students enrolled or accepted for enrollment at the institution who meet the eligibility requirements of § 646.3;

(ii) (8 points) The academic and other problems that eligible students encounter at the institution; and

(iii) (8 points) A comparison between students who would be eligible for Support Services and the total enrollment at the institution on the following factors:

(A) Attrition rates.

(B) Grade point averages.

(C) Graduate and professional school enrollment rates.

(g) *Likelihood of success.* (20 points)

(1) The Secretary reviews each application for information that shows the likelihood of success of the proposed project.

(2) To determine the likelihood of success, the Secretary looks for information that shows the comprehensiveness of the applicant's plan for—

(i) (4 points) Identifying students eligible to be served by the project and selecting participants from those eligible;

(ii) (4 points) Conducting an individual needs assessment of supportive services for each participant selected;

(iii) (10 points) Providing—through the project, the institution, or other sources—those activities listed in § 646.10(a) that the applicant chooses to propose, and any other activities that the applicant proposes that relate to the goal of the program; and

(iv) (2 points) Locating the project in an area that is accessible to participants, especially handicapped participants.

(h) *Institutional commitment.* (15 points)

(1) The Secretary reviews each application for information that shows the commitment of the applicant to the Support Services project.

(2) The Secretary looks for information that shows—

(i) (3 points) The degree to which the administrative and academic policies, grading systems, retention policies, and probation procedures indicate institutional commitment to the participants' chances for graduating from the institution;

(ii) (5 points) (A) The extent to which the institution has made available, in the previous three years, educational opportunities for low-income students, first-generation college students, and physically handicapped students; and

(B) The efforts of the institution to retain these students and to improve their chances of graduating from the institution;

(iii) (3 points) The extent to which the project director will contribute to administrative and academic policies that affect participants' chances of completing an educational program at the institution;

(iv) (2 points) The extent to which the applicant proposes to inform the institutional community of the goals and objectives of the Support Services project; and

(v) (2 points) The extent to which the applicant will make available to the project institutional resources, including the commitment of time from institutional faculty and staff.

(Authority: 20 U.S.C. 1070d, 1070d-1b and 3474)

[47 FR 9150, Mar. 3, 1982, as amended at 52 FR 27906, July 24, 1987]

§ 646.32 Prior experience.

(a)(1) The Secretary gives priority to each applicant that has conducted a Support Services project within the three fiscal years prior to the fiscal year for which the applicant is applying.

(2) To determine the number of priority points to be awarded each eligible applicant, the Secretary considers the applicant's prior experience of service delivery in accordance with paragraphs (b) and (c) of this section.

(b)(1) The Secretary may add from one to fifteen points to the point score obtained on the basis of the selection criteria in § 646.31, based on the applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (c) of this section.

(2) The maximum possible score for each criterion is indicated in the parentheses preceding the criterion.

(c) The Secretary—based on information contained in one or more of the following: Performance reports, audit reports, site visit reports, project evaluation reports, the previously funded application, the negotiated program plan(s), and the application under consideration—looks for information that shows—

(1) (2 points) The extent to which the project has served the number of participants it was funded to serve;

(2) (1 point) The extent to which project participants were awarded sufficient financial assistance—grants-in-aid, tuition waivers, and other forms of financial assistance—to meet the participants' full financial need for at-

tendance requirements at the grantee institution;

(3) (3 points) The extent to which project participants persisted toward completion of the academic programs in which they are enrolled;

(4) (3 points) The extent to which project participants met institutional academic performance levels required to stay in good standing at the grantee institution;

(5) (3 points) The extent to which the applicant has achieved other goals and objectives as stated in the previously funded application or negotiated program plan;

(6) (3 points) The extent to which the applicant has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of the previously funded award.

(Authority: 20 U.S.C. 1070d, 1070d-1b; Senate Rept. 96-733, 96 Cong. 1st Sess. p. 28)

[47 FR 24944, June 8, 1982, as amended at 52 FR 27906, July 24, 1987]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 646.40 Allowable costs.

Allowable project costs, not specifically covered by 34 CFR Part 74, may include the following costs reasonably related to carrying out a Support Services project:

(a) Cost of remedial and special classes if—

(1) These classes are limited to project participants; and

(2) The institution does not provide identical instruction—

(i) As part of its program of instruction; or

(ii) Through another Federal program or a State, local, or privately funded program.

(b) Courses in English language instruction for students of limited proficiency in English if these classes are—

(1) Limited to project participants; and

(2) Not otherwise available.

(c) In-service training of project staff.

(d) Activities of an academic or cultural nature, such as field trips, special lectures, and symposiums, that have as their purpose the improv ment of the participants' academ progress and personal development the institution.

(e) Transportation of participants and from approved educational a cultural activities sponsored by th project.

(Authority: 20 U.S.C. 1070d, 1070d-1b)

[47 FR 9150, Mar. 3, 1982, as amended at FR 27906, July 24, 1987]

§ 646.41 Nonallowable costs.

Costs that may not be charge against a grant under this program i clude the following:

(a) Costs involved in the recruitin of students for enrollment at the inst tution.

(b) Purchase of major equipmen unless the grantee demonstrates t the Secretary's satisfaction that pu chase is required to meet the purpos of the project and is less expensiv than renting.

(c) Payment of tuition, stipends, o any other form of student financi support to staff or participants.

(d) Research not directly related t the evaluation or improvement of th project.

(e) Construction, renovation, or re modeling of any facilities.

(Authority: 20 U.S.C. 1070d, 1070d-1b)

§ 646.42 Other requirements of a grantee.

Each grantee shall—

(a) Engage a full-time project director. However, the Secretary may waive the full-time requirement as specified in EDGAR, 34 CFR 75.511; and

(b) Determine the eligibility of each participant at the time that the individual is selected to participate in the project. The grantee does not have to revalidate a participant's eligibility after this time.

(Authority: 20 U.S.C. 1070d, 1070d-1b)

PART 648—INSTITUTIONAL GRANTS FOR GRADUATE AND PROFESSIONAL STUDY

Subpart A—General

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648.1 Institutional grants for graduate and professional study.
648.2 Eligible parties.
648.3 Regulations that apply to the Institutional Grant Program.
648.4 Definitions.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

648.10 Eligible activities.

Subpart C—How Is Application Made for a Grant?

648.20 How does one apply for funds?

Subpart D—How Is a Grant Made?

648.30 How does the Secretary evaluate an application?
648.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must a Grantee Meet?

648.40 Costs.

AUTHORITY: Part A of Title IX of the Higher Education Act as amended by Pub. L. 96-374 (94 Stat. 1367, 1487; 20 U.S.C. 1134-1134b), unless otherwise noted.

SOURCE: 46 FR 37867, July 22, 1981, unless otherwise noted.

Subpart A—General

§ 648.1 Institutional grants for graduate and professional study.

Institutional Grants for Graduate and Professional Study—referred to in these regulations as the Institutional Grant Program—provide Federal financial assistance to enable institutions of higher education to maintain, strengthen, and improve the quality of graduate and professional programs leading to an advanced degree (other than a medical degree); to establish, strengthen, and improve programs designed to prepare graduate and professional students for public service; and to strengthen undergraduate degree programs when it is determined such undergraduate programs are prerequisite to undertaking graduate or professional programs leading to advanced degrees.

(Authority: 20 U.S.C. 1134)

[47 FR 11866, Mar. 19, 1982]

§ 648.2 Eligible parties.

An institution of higher education is eligible to apply for a grant under this program on its own behalf, or on behalf of a group of institutions of higher education.

(Authority: 20 U.S.C. 1134; 1134b(b)(4))

§ 648.3 Regulations that apply to the Institutional Grant Program.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions); and

(b) The regulations in this Part 648.

(Authority: 20 U.S.C. 1221e-3, 1134-1134b)

§ 648.4 Definitions.

(a) *Definition in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget Period
Department
EDGAR
Secretary

(b) *The following definitions apply specifically to this Part:* "Act" means the Higher Education Act of 1965, as amended.

Professional study means post-baccalaureate study leading to the advanced degree that enables an individual to enter a professional career.

(Authority: 20 U.S.C. 1221e-3, 1134-1134b)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 648.10 Eligible activities.

Eligible activities include, but are not limited to, the following: Faculty improvement; maintenance and improvement of quality of graduate and professional programs of study; acquisition of appropriate instructional equipment and materials; cooperative arrangements among graduate and professional schools; strengthening graduate and professional school administration; development of proposed graduate and professional programs; and needed innovation in graduate and professional programs.

(Authority: 20 U.S.C. 1134b(b))

Subpart C—How Is Application Made for a Grant?

§ 648.20 How does one apply for funds?

(a) To apply for funds, an institution of higher education shall submit an application that responds to the criteria described in § 648.31.

(b) An application under this part must include the following:

(1) A description of the proposed graduate or professional project which contributes to achieving the program's goals.

(2) An assurance that the appropriate State entity that performs planning functions under Title I of the Act has been given an opportunity to offer recommendations on the application both to the applicant and to the Secretary.

(Authority: 20 U.S.C. 1134a(b), 1143)

Subpart D—How Is a Grant Made?

§ 648.30 How does the Secretary evaluate an application?

(a) For applications of substantially equal quality, the Secretary gives priority to projects that strengthen activities that support Graduate and Professional Opportunities Fellowships and Public Service fellowships funded under Title IX-B of the Act.

(b)(1) The Secretary evaluates an application on the basis of the criteria in § 648.31.

(2) The Secretary awards up to 100 possible points for these criteria.

(3) The maximum possible score for each criterion is indicated in parentheses following the title of the criterion.

(Authority: 20 U.S.C. 1134a(b))

§ 648.31 What selection criteria does th Secretary use?

(a) *Plan of operation.* (15 points) (1 The Secretary reviews each application for information that shows the quality of the plan of operation fo the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points) (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Strength of the academic program.* (15 points) The Secretary reviews each application for information that shows that the overall graduate or professional academic program of the institution is strong enough to assure the success of the proposed project.

(g) *Impact of the project on the institution.* (15 points) The Secretary reviews each application for information that shows the project's proposed activities are likely to result in maintaining, strengthening, or improving programs in graduate and professional study in relation to the identified needs.

(h) *Activities proposed for underrepresented groups.* (10 points) The Secretary reviews each application for information that shows the project proposes activities that would assist in providing graduate and professional education to persons with varied backgrounds and experiences including, but not limited to, members of minority groups and women who are underrepresented in colleges and universities and in the academic and professional career fields to which the education leads.

(i) *Cooperative arrangements.* (5 points) The Secretary reviews each application for information that shows that in planning the project, the institution has considered, and where appropriate, has entered into cooperative arrangements with other graduate or professional units of the institution, and/or outside institutions or agencies in supportive efforts of mutual benefit.

(j) *Local, State, or national priorities.* (5 points) The Secretary reviews each application for information that shows the project is consistent with local, State, or national priorities. Any national priorities will be determined on the basis of documentation of national needs in the application submitted.

(Authority: 20 U.S.C. 1134; 1134a(c))

Subpart E—What Conditions Must a Grantee Meet?

§ 648.40 Costs.

Funds awarded under these regulations may not be used for:

(a) Payment in excess of 66⅔ percent of the total cost of the approved project or activity;

(b) Payment in excess of 50 percent of the cost of the purchase or rental of books, audiovisual aids, scientific apparatus, or other materials or equipment, less any percent of such cost, as determined by the Secretary, that is paid from sums received (other than under this part) as Federal financial assistance; and

(c) Fellowship assistance to students.

(d) Sectarian instruction or religious worship, or primarily in connection with any part of the program of a school or department of divinity.

(Authority: 20 U.S.C. 1134b(c))

PART 649—PATRICIA ROBERTS HARRIS FELLOWSHIPS PROGRAM

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AUTHORITY: 20 U.S.C. 1134d to 1134f, unless otherwise noted.

SOURCE: 46 FR 3401, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 649.1 Patricia Roberts Harris Fellowships.

(a) Patricia Roberts Harris Fellowships—referred to in these regulations as the Fellowship Program—provides Federal assistance to enable institutions of higher education to make available fellowship awards in postbaccalaureate education to graduate and professional students who demonstrate financial need.

(Authority: 20 U.S.C. 1134d)

(b) An institution of higher education may apply for a grant under this program to award one or more of the following types of fellowships:

(1) *Graduate and Professional Study Fellowships,* awarded to individuals from groups who are underrepresented in graduate or professional study.

(2) *Public Service Education Fellowships,* awarded to individuals who plan to pursue a career in public service.

(c) Each recipient of an award under this program is to be known as a "Particia Roberts Harris Fellow."

(Authority: 20 U.S.C. 1134(e))

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55256, Nov. 9, 1981; 52 FR 22284, 22285, June 10, 1987]

§ 649.2 Eligible parties.

Institutions of higher education as defined in section 1201(a) of the Act are eligible for grants under these regulations.

(Authority: 20 U.S.C. 1134e; 1141(a))

[46 FR 55256, Nov. 1981]

§ 649.3 Regulations that apply to the fellowship program.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply To Department Regulations), Part 78 (Education Appeal Board), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities), except that §§ 75.116, 75.117,

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and 75.232 are inapplicable to this program; and §§ 75.510 through 75.568 are inapplicable to the institutional allowances to institutions of higher education under this program.

(b) The regulations in this Part 649.

(Authority: 20 U.S.C. 1134d, 1134e)

[52 FR 22285, June 10, 1987, as amended at 55 FR 21716, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21716, May 25, 1990, § 649.3(a) was amended by removing the word "and", after "Department Regulations)," and by adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" after "Appeals Board)", effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 649.4 Definitions.

(a) The following terms used in this part are defined in 34 CFR Part 77 (EDGAR):

Applicant
Application
Award
Budget Period
Department
Secretary

(b) The following definitions apply specifically to this part:

Academic area means a professional school, academic department, or similar organizational unit within an institution of higher education.

Academic career beyond high school means a career as a teacher, administrator, or educational specialist at some level of postsecondary education.

Act means the Higher Education Act of 1965, as amended.

Fellow means a recipient of a Patricia Roberts Harris Fellowship under this part.

Fellowship means an award made by an institution of higher education to a person for graduate or professional study under Title IX-B of the Act.

Financial need means, for an academic year, the cost of attendance of a fellow minus the fellow's expected family contribution, as determined under Part F of Title IV of the Act.

Independent institution means an institution of higher education, other than one that is publicly controlled, that meets the definition of an institution of higher education in section 1201(a) of the Act.

Public service education means the preparation for leadership and management careers in local, State, or national government or in nonprofit community service organizations.

Traditionally underrepresented groups means minorities and other groups, including women, who historically have been underrepresented in the specific graduate area of study or profession for which a fellowship is awarded.

(Authority: 20 U.S.C. 1134d-1134g)

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55256, Nov. 9, 1981; 52 FR 22284, 22285, June 10, 1987]

Subpart B—How Does an Institution Apply for and Obtain Approval of its Program?

§ 649.10 How to apply for funds.

(a) In order to apply for a grant under this part, an institution of higher education must submit an application that responds to the appropriate criteria in §§ 649.12 and 649.13.

(b) The application must describe how the institution of higher education will select eligible individuals to receive fellowships. This description must include evidence that the selected individual—

(1) Will achieve the academic goals of the fellowship; and

(2) Can demonstrate financial need.

(Authority: 20 U.S.C. 1134f(a))

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55256, Nov. 9, 1981; 52 FR 22285, June 10, 1987]

§ 649.11 How does the Secretary evaluate an application?

(a) *Funding reservations.* (1) The Secretary reserves funds for grants Fellowships under section 922(e) of the Act (referring to the amount the Secretary is required to expend for each category of fellowships) and applicable appropriation statutes.

(Authority: 20 U.S.C. 1134e(e))

(2) Before considering applications that include support for new fellowships, the Secretary provides funds to continue support for qualified students—

(i) Who were awarded fellowships under this program in a previous year; and

(ii) Who are maintaining satisfactory progress as determined by the institution.

(Authority: 20 U.S.C. 1134f(b))

(b) *Selection criteria.* Subject to the funding reservations, the Secretary—in determining whether to select an institution of higher education for a grant and how many fellowships to authorize under the grant—assesses an application on the basis of the criteria in § 649.12 for Graduate and Professional Study Fellowships and the criteria in § 649.13 for Public Service Education Fellowships.

(1)(i) In assessing applications for Graduate and Professional Study Fellowships, the Secretary ranks each academic area in which an applicant proposes to award fellowships. The Secretary ranks each academic area according to the combined scores for institution-wide criteria and criteria for that area.

(ii) The Secretary awards up to 56 possible points for the institution-wide criteria (§ 649.12 (a)-(e)), and up to an additional 44 possible points for the criteria specific to the academic area submitted (§ 649.12 (f)-(k)).

(2) In assessing an application for Public Service Fellowships, the Secretary awards up to 100 possible points.

(3) The maximum possible score for each criterion is indicated in parentheses following the heading for that criterion.

(4) In evaluating an application from an institution that previously received a grant under this program, the Secretary assesses the extent to which the previously funded grant achieved its objectives.

(Authority: 20 U.S.C. 1134e(d) (1) and (2))

(c) *Other considerations.* For applications of substantially equal quality, the Secretary gives priority to applications that will contribute to achieving the following:

(1) An equitable geographic distribution of grants.

(2) An equitable distribution of awards among eligible public and independent institutions of higher education.

(Authority: 20 U.S.C. 1134e(b)(1))

(3) An appropriate balance of fellowships with regard to academic areas, taking account of present and projected needs for highly trained individuals in all areas of education beyond secondary school and in other than academic career fields of high national priority.

(Authority: 20 U.S.C. 1124e(d))

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55257, Nov. 9, 1981; 52 FR 22284, 22285, June 10, 1987]

§ 649.12 What selection criteria does the Secretary use for Graduate and Professional Opportunity Fellowships?

INSTITUTION-WIDE CRITERIA

(a) *Institutional commitment.* (20 points)

(1) The Secretary reviews each application for information that shows the overall strength of an institution's commitment to meet the needs of the students it proposes to serve from underrepresented groups.

(2) The institution may demonstrate this commitment in such ways as the following:

(i) The provision of evidence that the institution's social and academic environment is supportive of the academic success of students from traditionally underrepresented groups on the applicant's campus.

(ii) The availability of other sources of financial aid and support mechanisms for these students.

(iii) The hiring of faculty and administrators from traditionally underrepresented groups.

(b) *Recruitment plan.* (14 points)

(1) The Secretary reviews each application for information that describes that institution's recruitment plan.

(2) The Secretary looks for information that shows:

(i) An active, aggressive, and imaginative effort to identify and attract qualified individuals from traditionally underrepresented groups.

(ii) The applicant's previous and current efforts in attracting and successfully preparing students from traditionally underrepresented groups for careers, including Graduate and Professional Study Fellows, and other graduate and professional and undergraduate students.

(c) *Net increase of underrepresented students.* (8 points)

The Secretary reviews each application for information that shows that the proposed arrangements to assign the fellowships to the approved academic areas—

(1) Will result in a net increase of students from traditionally underrepresented groups in each area; and

(2) Will not result in a decrease in the amount of the institution's own financial support available for other students from traditionally underrepresented groups in the academic area and in the institution as a whole.

(d) *Program director.* (6 points)

The Secretary reviews each application for information that shows that the director has clear responsibilities, ample time, and sufficient institutional or academic authority to coordinate the overall administration of the program.

(e) *Employment opportunities.* (8 points)

The Secretary reviews each application for information that shows that the institution's educational program leads to immediate career opportunities in the graduate or professional study areas for which students from traditionally underrepresented groups have been recruited.

ACADEMIC AREA CRITERIA

(f) *Evidence of underrepresentation.* (10 points)

The Secretary reviews each application for evidence that the students whom the institution proposes to recruit are from traditionally underrepresented groups in the proposed academic areas.

(g) *Evidence of national need.* (10 points)

The Secretary reviews each application for information that justifies the need for more highly trained individuals in academic careers beyond the high school level or in other career fields of high national priority.

(h) *Quality of academic program.* (7 points)

(1) The Secretary reviews each application for information that shows high quality of the academic program in terms of course offerings and academic requirements for students.

(2) The Secretary also looks for information that shows the appropriateness of the level of the degree to prepare the individual for an academic or professional career.

(i) *Quality of key faculty.* (7 points)

(1) The Secretary reviews each application for information that shows the qualifications of the faculty in the academic area.

(2) The Secretary looks for information that shows that the background, education, research interests, and relevant experience of the faculty qualify them to plan and implement a successful program of high academic quality.

(j) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the academic area.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment that the applicant plans to use is adequate.

(k) *Special orientations and experiences.* (5 points)

The Secretary reviews each application for information that shows the applicant plans to provide special orientations, practical experiences, and necessary assistance designed to prepare fellowship recipients for academic careers or other professional careers of high national priority.

(Approved by the Office of Management and Budget under control number 1840-0508)

(Authority: 20 U.S.C. 1134e(d) (1) and (2); 1134e(e)(3))

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55257, Nov. 9, 1981; 52 FR 22284, June 10, 1987; 53 FR 49147, Dec. 6, 1988]

§ 649.13 What selection criteria does the Secretary use for Public Service Fellowships?

(a) *Program objectives.* (10 points)

The Secretary looks for information that demonstrates present and projected needs for highly trained individuals in the fields of public service, including academic careers beyond the high school level focused on public service education.

(b) *Traditionally underrepresented groups.* (10 points)

The Secretary reviews each application for information that demonstrates the extent to which the program provides public service education to individuals from traditionally underrepresented groups.

(c) *Quality of academic program.* (10 points)

(1) The Secretary reviews each application for information that shows high quality of the academic program in terms of course offerings and academic requirements for students.

(2) The Secretary also looks for information that shows the appropriateness of the level of the degree to prepare the individual for a career in public service.

(d) *Practical experiences and internships.* (15 points)

The Secretary reviews each application for information that shows the program offers opportunities for relevant, supervised practical experiences and internships.

(e) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use in its program of public service education.

(2) The Secretary looks for information that shows—

(i) The qualifications of the program director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the program;

(iii) The time that each person referred to in paragraphs (e)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the program, as well as other information that the applicant provides.

(f) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to its program of public service education.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment that the applicant plans to use is adequate.

(g) *Cooperative arrangements.* (10 points)

The Secretary reviews each application for information that shows that the program establishes arrangements with governmental agencies or other nonprofit agencies for such activities as program development, personnel exchanges among faculty and agency staff, and field workers.

(h) *Institutional cooperation.* (5 points)

The Secretary reviews each application for information that shows that the applicant has considered and, if appropriate, entered into cooperative arrangements with other graduate units of the applicant in supportive efforts of practical benefit to public service education.

(i) *Success of graduates.* (5 points)

The Secretary reviews each application for evidence of past success of graduates of the program in achieving leadership and management positions in public service careers.

(Approved by the Office of Management and Budget under control number 1840-0509)

(Authority: 20 U.S.C. 1134e(d))

[46 FR 3401, Jan. 19, 1981, as amended at 52 FR 22284, June 10, 1987; 53 FR 49147, Dec. 6, 1988]

§ 649.14 What selection criteria does the Secretary use for Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships?

(a) *Program objectives.* (15 points) The Secretary reviews each application for information that shows the present and projected needs for highly trained individuals in the field of domestic mining and mineral and mineral fuel conservation—including academic careers beyond the high school level—in any of the following areas:

(1) The improvement of technologies for the efficient extraction and processing of nonrenewable minerals and mineral fuels including the development of—

(i) Improved systems of underground, underwater, and surface mining techniques;

(ii) Improved methods to protect the health and safety of people involved in extraction and processing operations; and

(iii) Improved methods to protect and restore the environment in extracting and processing operations.

(2) The development of ways to ensure the availability of nonrenewable minerals and mineral fuels through—

(i) Improved exploration or discovery techniques;

(ii) Optimum recovery of existing mineral and mineral fuel reserves;

(iii) Improved use of processed minerals and mineral fuels through recycling technology; and

(iv) Improved understanding of mineral economics.

(b) *Underrepresented groups.* (10 points) The Secretary reviews each application for information that demonstrates the extent to which the program prepares individuals from underrepresented groups for careers in domestic mining or mineral and mineral fuel conservation.

(c) *Quality of academic program.* (20 points)

(1) The Secretary reviews each application for information that shows the high quality of the academic program in terms of course offerings and academic requirement for students.

(2) The Secretary also looks for information that shows the appropriateness of the level of the degree to prepare an individual for a career in domestic mining or mineral and mineral fuel conservation.

(d) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use in its program of domestic mining and mineral fuel conservation.

(2) The Secretary looks for information that shows—

(i) The qualifications of the program director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the program;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the program, as well as other information that the applicant provides.

(e) *Adequacy of resources.* (20 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to its program of domestic mining and mineral fuel conservation.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment that the applicant plans to use is adequate.

(f) *Employment opportunities.* (10 points)

The Secretary reviews each application for information that shows that the educational program leads to immediate career opportunities in domestic mining and mineral fuel industries, including careers in teaching in those subject areas at institutions of higher education.

(Authority: 20 U.S.C. 1134e(e)(2))

Subpart C—How Does a Person Apply for a Fellowship?

§ 649.20 Application procedure.

A student applies directly to an institution of higher education that has received an allocation of fellowships.

[46 FR 55257, Nov. 9, 1981]

Subpart D—How Are Fellows Selected?

§ 649.30 What are the criteria for selecting fellows?

To receive a fellowship, a person must—

(a) Have been accepted for or be enrolled in a program of study leading to a postbaccalaureate graduate degree—such as a doctor of philosophy or doctor of arts—or to a postbaccalaureate professional degree—such as doctor of jurisprudence or master of business administration—necessary for professional practice in a given field;

(b) Have been accepted for or be enrolled in the program referred to in paragraph (a) of this section at an institution of higher education that has received a grant;

(c) Plan to pursue—

(1) An academic career or some other professional career of importance in the academic area of study approved by the Secretary; or

(2) A career in public service.

(d)(1) Be a national of the United States;

(2) Be in the United States for other than a temporary purpose and intend to become a permanent resident; or

(3) Be a permanent resident of the Trust Territories of the Pacific Islands.

(e) Demonstrate financial need under an approved financial need analysis system as described in § 649.10(b).

(Authority: 20 U.S.C. 1134e)

[46 FR 3401, Jan. 19, 1981, as amended at 52 FR 22285, June 10, 1987]

Subpart E—What Conditions Must Be Met by an Institution and a Fellow?

§ 649.40 Tenure of fellowship.

(a) A fellowship award is for a period of up to 36 months.

(b)(1) A fellow who maintains satisfactory progress in his or her course of study may have the fellowship renewed annually, subject to the availability of funds.

(2) However, no fellow may receive assistance under this fellowship for more than 36 months of support except as provided in paragraph (c) of this section.

(c)(1) Depending on the availability of funds and under special circumstances, the Secretary may provide for a fellowship extension of not more than 12 months in addition to the 36 months of support a fellow receives under this program. Generally, special circumstances would be the need for additional months to complete the doctorate or equivalent degree.

(2) The institution of higher education must request approval for the additional support in its application and must request appropriate sums in the proposed budget.

(Authority: 20 U.S.C. 1134f)

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55257, Nov. 9, 1981]

§ 649.41 Vacated fellowships.

(a)(1) If a fellow vacates a fellowship prior to the end of the first year of the award, the institution of higher education to which the fellowship is allocated may reaward the fellowship to another individual.

(2) This individual must meet the eligibility requirements stated in § 649.30 and be chosen in accordance with the institution's fellowship award procedures.

(b) A fellow awarded a vacated fellowship may apply for renewal of the fellowship for up to 36 months.

(c)(1) Second and third year continuation fellowships must be for the same individual who held the fellowship at the end of the first academic year.

(2) If a continuation fellowship is vacated after the first year, it may not be awarded to another individual. The fellowship terminates at that time.

(d) If a fellow graduates at any time during tenure of the fellowship, the fellowship terminates at that time.

(Authority: 20 U.S.C. 1134f(b))

§ 649.42 Fellowship conditions.

In order to continue to receive payments under a fellowship, a fellow must:

(a) Maintain satisfactory progress as determined by the institution of higher education;

(b) Devote essentially full time to study or research (including acting as a teaching or research assistant as may be required as a condition to award of a degree) in the field in which the fellowship was awarded; and

(c) Not engage in gainful employment during the period of the fellowship, except on a part-time basis in teaching, research, or similar activities approved by the Secretary.

(Authority: 20 U.S.C. 1134f(b))

[46 FR 3401, Jan. 19, 1981, as amended at 52 FR 22285, June 10, 1987]

Subpart F—What Are the Administrative Responsibilities of the Institution?

§ 649.50 Amount of a fellowship.

(a) The maximum stipend that an institution may award to any fellow for a twelve-month period is $10,000, or the demonstrated level of the fellow's financial need, whichever is less. A fellow who is enrolled in the institution's approved program for an entire academic year, that includes a summer session(s), will be considered to be enrolled in the program for the full 12 months.

(b) A fellow who is enrolled in the program for fewer than 12 months shall receive a pro rata share of the stipend.

(Authority: 20 U.S.C. 1134f(a))

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55257, Nov. 9, 1981; 52 FR 22285, June 10, 1987]

§ 649.51 Institutional allowance.

(a) Under section 922(f) of the Act, the Secretary establishes and pays an institutional allowance for each fellowship in the same amount as is paid under similar fellowship programs administered through the National Science and other similar agencies.

(b) If the fellow is enrolled for fewer than 12 months, the Secretary pays the institution of higher education a pro rata share of this amount.

(c) If the institution of higher education charges and collects from a fellow for tuition or nonrefundable fees that are required by the institution as a part of the fellow's instructional program, the Secretary deducts that amount from the institutional allowance.

(d) The institutional allowance is in lieu of any administrative or other costs for an institution of higher education. The allowance is not subject to restrictions on allowable costs.

(Authority: 20 U.S.C. 1134e(f))

[46 FR 3401, Jan. 19, 1981, as amended at 52 FR 22285, June 10, 1987]

§ 649.52 Payment procedures.

(a) The Secretary pays to the institution of higher education the fellowship stipends and institutional allowances.

(b) If an institution of higher education is unable to use all of the amounts available to it under this program, the Secretary will—on such dates each fiscal year as determined by the Secretary—reallot the amounts not needed to institutions of higher education which can use the grants authorized under this program.

(c) The Secretary does not award a fellowship under this part for study at a school or department of divinity.

(Authority: 20 U.S.C. 1134e(f), 1134f(a))

[46 FR 3401, Jan. 19, 1981, as amended at 46 FR 55257, Nov. 9, 1981; 52 FR 22285, June 10, 1987]

PART 650—JACOB K. JAVITS FELLOWS PROGRAM

Subpart A—General

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AUTHORITY: 20 U.S.C. 1134h-1134k, unless otherwise noted.

SOURCE: 50 FR 33221, Aug. 16, 1985, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes for Part 650 appear at 52 FR 29356, Aug. 6, 1987.

Subpart A—General

§ 650.1 What is the Jacob K. Javits Fellows Program?

(a) Under the Jacob K. Javits Fellows Program the Secretary awards fellowships to students of superior ability selected on the basis of demonstrated achievement and exceptional promise, for study at the doctoral level in selected fields of the arts, humanities, and social sciences.

(Authority: 20 U.S.C. 1134h)

(b) Students awarded fellowships under this program are called Jacob K. Javits Fellows.

(Authority: 20 U.S.C. 1134)

[50 FR 33221, Aug. 16, 1985, as amended at 52 FR 29356, Aug. 6, 1987]

§ 650.2 Who is eligible to apply for a fellowship under this program?

An individual is eligible to apply for a fellowship under the Jacob K. Javits Fellows Program if the individual—

(a) At the time of application, is eligible to begin or has begun graduate study at the doctoral level at an accredited institution of higher education;

(b)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands; and

(c) Meets any additional eligibility requirements established by the Fellowship Board.

(Authority: 20 U.S.C. 1134h-1134k)

[50 FR 33221, Aug. 16, 1985, as amended at 52 FR 29357, Aug. 6, 1987]

§ 650.3 What regulations apply to the Jacob K. Javits Fellows Program?

The following regulations apply to this program:

(a) The regulations in this Part 650.

(b) The regulations in EDGAR 34 CFR and Parts 74 and 75, except for the following provisions in EDGAR 34 CFR Part 75, which do not apply;

(1) Subpart C—How to apply for a grant.

(2) Subpart D—How grants are made.

(3) Sections 75.580 through 75.592 of Subpart E.

(c) For the purposes of the regulations in this part, the terms "grantee" and "recipient", as used in EDGAR, mean an institution of higher education that administers a fellowship award under this part.

(Authority: 20 U.S.C. 1134h)

§ 650.4 What definitions apply to the Jacob K. Javits Fellows Program?

The following definitions apply to terms used in this part;

"Act" means the Higher Education Act of 1965, as amended.

"Fellow" means a recipient of a Jacob K. Javits fellowship under this part.

"Fellowship" means an award made to a person for graduate study under this part.

"Fellowship Board" means the Jacob K. Javits Fellows Program Fellowship Board, composed of individual representatives of both public and private institutions of higher education who are appointed by the Secretary to establish general policies for the program and oversee its operation.

"Institution of higher education" means an institution of higher education as defined in section 1201(a) of the Act.

"Satisfactory progress" means a fellow's progress, in the program for which the fellowship is awarded, that meets or exceeds the institution's norms or standards for doctoral student advancement, as verified by a certified report from the institution to the Secretary.

"Secretary" means Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

"Stipend" means the amount paid to an individual awarded a fellowship, including an allowance for subsistence and other expenses for the individual and his or her dependents.

(Authority: 20 U.S.C. 1134h-1134k)

[50 FR 33221, Aug. 16, 1985, as amended at 52 FR 29357, Aug. 6, 1987]

§ 650.5 What does a fellowship award include?

The Secretary awards fellowships consisting of the following:

(a) A stipend paid to the fellow, based upon an annual determination of the fellow's financial need, as set forth in § 650.42.

(b) An annual allowance paid to the institution in which the fellow is enrolled of $6000.

(Authority: 20 U.S.C. 1134j)

[50 FR 33221, Aug. 16, 1985, as amended at 52 FR 29357, Aug. 6, 1987]

Subpart B—How Does an Individual Apply for a Fellowship?

§ 650.10 How does an individual apply for a fellowship?

An individual shall apply to the Secretary for a fellowship award in response to an application notice published by the Secretary in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1134h)

Subpart C—How Are Fellows Selected?

§ 650.20 What are the selection procedures?

(a) The Fellowship Board establishes criteria for the selection of fellows.

(b) Each year the Fellowship Board selects specific fields of study, and the number of fellows in each field (within the humanities, arts and social sciences), for which fellowships will be awarded.

(c) The Fellowship Board appoints panels of distinguished individuals in each field to evaluate applications.

(d) The Fellowship Board may make awards of the fellowships each year in two or more stages, taking into account at each stage the amount of funds remaining after the level of funding for awards previously made has been established or adjusted.

(Authority: 20 U.S.C. 1134i)

Subpart D—What Conditions Must Be Met by Fellows?

§ 650.30 Where may fellows study?

A fellow may use the fellowship only for enrollment in a doctoral program at an institution of higher education which is accredited by an accrediting agency or association recognized by the Secretary, which accepts the fellow for graduate study, and which has agreed to comply with the provisions of this part applicable to institutions.

(Authority: 20 U.S.C. 1134h-1134k)

§ 650.31 What is the duration of a fellowship?

(a) An individual may receive a fellowship under this program for up to 48 months or until receiving the doctoral degree being sought, whichever occurs first.

(b) A fellow who maintains satisfactory progress in his or her course of study may have the fellowship renewed annually, subject to the availability of funds.

(Authority: 20 U.S.C. 1134h)

§ 650.32 What conditions must be met by fellows?

In order to continue to receive payments under a fellowship, a fellow shall—

(a) Maintain satisfactory progress in the program for which the fellowship was awarded as determined by the institution of higher education;

(b) Devote essentially full time to study or research in the field in which the fellowship was awarded, as determined by the institution of higher education;

(c) Not engage in gainful employment during the period of the fellowship except on a part-time basis, for the institution of higher education at which the fellowship was awarded, in teaching, research, or similar activities approved by the Secretary; and

(d) Begin study under the fellowship in the academic year specified in the fellowship award.

(Authority: 20 U.S.C. 1134h-1134k)

§ 650.33 May fellowship tenure be interrupted?

A fellow may interrupt periods of study under the fellowship for a period of up to 12 months for the purpose of work, travel or independent study (not part of the fellow's program at the institution of higher education) away from the institution of higher education at which the fellow is enrolled only if—

(a) The work, travel, or independent study is a supportive of the fellow's academic program; and

(b) The leave of absence is approved by the institution at which the fellow is enrolled.

(Authority: 20 U.S.C. 1134h)

[50 FR 33221, Aug. 16, 1985, as amended at 52 FR 29357, Aug. 6, 1987]

§ 650.34 May fellows make changes in institution or field of study?

After an award is made, a fellow may not make any change in the field of study or institution attended without the prior approval of the Secretary.

(Authority: 20 U.S.C. 1134k)

§ 650.35 What records and reports are required from fellows?

Each individual who is awarded a fellowship shall keep such records and submit such reports as are required by the Secretary.

(Authority: 20 U.S.C. 1134k)

Subpart E—What Are the Administrative Responsibilities of the Institution?

§ 650.40 What institutional agreements are needed?

Students enrolled in an otherwise eligible institution of higher education may receive fellowships only if the institution enters into an agreement with the Secretary to comply with the provisions of this part.

(Authority: 20 U.S.C. 1134h-1134k)

§ 650.41 How are institutional allowances to be administered?

(a) An institution shall treat the institutional allowance paid by the Secretary to the institution on behalf of a fellow as full payment by the fellow, for the period covered by the allowance, for tuition and other expenses otherwise required by the institution as part of its instructional program.

(b) If the fellow is enrolled for less than a full academic year, the Secretary pays the institution a pro rata share of the allowance.

(Authority: 20 U.S.C. 1134j)

§ 650.42 How are stipends to be administered?

(a) Except as provided in paragraph (c) of this section, an institution shall calculate the amount of a fellow's financial need annually in the same manner as that in which the institution calculates its students' financial need under Part F of Title IV of the Act. For this purpose the institution shall not treat—

(1) Any instructional costs covered by the institutional allowance under § 650.41, as costs of attendance; or

(2) Income derived from a fellow's teaching and research assistantship, that is a required part of the fellow's academic program, as income.

(b) The institution shall pay the fellow a stipend in the amount of the fellow's financial need or $10,000, whichever is less.

(c) For a fellowship initially awarded in fiscal year 1986, the institution shall, in fiscal year 1987 and in each subsequent fiscal year for the duration of the fellowship, calculate the amount of a fellow's financial need under the procedure in paragraph (a) of this section, except that—

(1) Subject to the provisions of paragraphs (c) (2) and (3) of this section, a fellow qualifies as an independent student for an award year if the fellow—

(i) Does not, during any of the relevant years described in paragraph (c)(2) of this section, live for more than six weeks in the home of his or her parent(s) for whom income must be reported;

(ii) Is not, for any of the relevant years described in paragraph (c)(2) of this section, claimed as a dependent for Federal income tax purposes by those parent(s); and

(iii) Does not, during any of the relevant years described in paragraph (c)(2) of this section, receive financial assistance of more than $750 from those parent(s).

(2) Except as provided in paragraph (c)(3) of this section, to qualify as an independent student for any award year—

(i) An unmarried fellow must satisfy the criteria in paragraph (c)(1) of this section for the first calendar year of an award year and the preceding calendar year; and

(ii) A married fellow must satisfy the criteria in paragraph (c)(1) of this section for the first calendar year of the award year.

(3) The Secretary considers any fellow to be an independent student if, before the end of the award year—

(i) The fellow's parents die; or

(ii) The fellow is declared a ward of the court.

(4) As used in this paragraph—

(i) "Award year" means the period of time from July 1 through June 30 of the following year.

(ii) "Parent" means a fellow's natural or adoptive mother or father. A parent also includes a fellow's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the fellow.

(iii) "Parent(s) for whom income must be reported" means a parent for whom income must be reported under the Pell Grant Program regulations, 34 CFR 690.33, as in effect on July 1, 1986. For this purpose, the references in § 690.33 to the date of the fellow's application are considered references to the date the fellow applies for a determination of need under Part F of Title IV of the Act.

(d) If a fellow is enrolled for less than a full academic year, the institution shall pay the fellow a pro rata share of the stipend.

(Authority: 20 U.S.C. 1134j)

[52 FR 29357, Aug. 6, 1987]

§ 650.43 How are disbursement and return of funds made?

(a) An institution shall disburse a stipend to a fellow in installments. No fewer than two installments per academic year may be made. If the fellowship is vacated or discontinued, the institution shall return any unexpended funds to the Secretary at the time and in such manner required by the Secretary.

(b) A fellow who withdraws from an institution before completion of an academic period for which a stipend installment has been paid to him shall return to the institution a prorated portion of the stipend installment, as determined by the Secretary. The institution shall return the funds to the Secretary at the time and in the manner required by the Secretary.

(c) If a fellow withdraws from an institution before completion of an academic period, the institution shall refund to the Secretary a prorated portion of the institutional allowance it received with respect to that student at the time and in the manner required by the Secretary.

(Authority: 20 U.S.C. 1134j)

§ 650.44 What records and reports are required from institutions?

(a) An institution shall provide to the Secretary, prior to receipt by such institution of funds for disbursement to a fellow, a certification from an appropriate official at the institution stating whether that fellow is making satisfactory progress in, and is devoting essentially full time to the program for which the fellowship was awarded.

(b) An institution shall keep such records as are necessary to establish the timing and amount of all disbursements of stipends.

(Approved by the Office of Management and Budget under control number 1840-0562)

(Authority: 20 U.S.C. 1134k)

[50 FR 33221, Aug. 16, 1985, as amended at 53 FR 49147, Dec. 6, 1988]

PART 651—TRAINING IN THE LEGAL PROFESSION

Subpart A—General

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651.1 Training in the Legal Profession.
651.2 Eligible parties.
651.3 Regulations that apply to this program.
651.4 Definitions.

Subpart B—What Kinds of Activities Does the Secretary Support Under This Program?

651.10 What kinds of support does the Secretary provide?
651.11 What activities are eligible for support?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

651.20 How does the Secretary select an award recipient?

Subpart E—What Conditions Must Be Met by an Award Recipient?

651.30 What are the limitations on allowable costs?

AUTHORITY: Part D of Title IX of the Higher Education Act of 1965, as amended by sec. 904 of Pub. L. 96-374, 94 Stat. 1486-87 (20 U.S.C. 1134l), unless otherwise noted.

SOURCE: 46 FR 37870, July 22, 1981, unless otherwise noted.

Subpart A—General

§ 651.1 Training in the Legal Profession.

(a) The Legal Profession Training Program assists individuals from disadvantaged backgrounds to undertake training for the legal profession.

(b) The program is designed to—

(1) Help admit, to accredited law schools, disadvantaged students who, but for the program, would not have been admitted; and

(2) Assist these students in obtaining a legal education and law degree.

(Authority: 20 U.S.C. 1134l)

§ 651.2 Eligible parties.

(a) Public and private agencies and organizations other than institutions of higher education are eligible to apply for grants or contracts under these regulations.

(b) The Secretary may implement this program through the award of a single grant or contract.

(Authority: 20 U.S.C. 1134l(a)).

§ 651.3 Regulations that apply to this program.

(a) *Regulations for procurement contracts.* The following regulations apply to any procurement contract under the Legal Professional Training Program:

(1) Procurement regulations in 41 CFR Chapters 1 and 34; and

(2) The regulations in this Part 651.

(b) *Regulations for grants.* The following regulations apply to any grants under the Legal Profession Training Program:

(1) The Education Department General Administrative Regulations (EDGAR) in Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 651.

§ 651.4 Definitions.

As used in these regulations—

(a) "Act" means the Higher Education Act of 1965, as amended.

(b) "Disadvantaged backgrounds" are backgrounds involving educational, cultural, or financial deprivations that hinder individuals from successfully competing for admission to law school or from successfully completing a course of legal study. These backgrounds include but are not limited to—

(1) Family income dependent in whole or in part on public assistance or inadequate to provide for needs beyond basic necessities such as food, housing, and clothing;

(2) Rural isolation;

(3) Limited English proficiency as defined in section 703(a)(1) of the Bilingual Education Act (20 U.S.C. 3223); or

(4) Attendance at a minority group isolated school, as defined for purposes of the Emergency School Aid Act in 34 CFR 185.02(g).

(Authority: 20 U.S.C. 1134l, 1221e-3)

Subpart B—What Kinds of Activities Does the Secretary Support Under This Program?

§ 651.10 What kinds of support does the Secretary provide?

Under this program the Secretary provides financial support for activities that assist individuals from disadvantaged backgrounds to undertake training for the legal profession.

(Authority: 20 U.S.C. 1134l(a))

§ 651.11 What activities are eligible for support?

The following activities are eligible for support under a grant or contract awarded under this program:

(a) Selecting individuals from disadvantaged backgrounds for training for the legal profession, including disseminating information about the program to eligible students;

(b) Making arrangements with accredited law schools to arrange entry of participating students into these schools;

(c) Providing counseling and related services—both prior to and during law school training—designed to assist participating students in preparing for and completing law school training;

(d) Providing preliminary training in legal education to prepare participating students for law school.

(1) Preliminary training may include, but need not be limited to, orientation of students to the legal process, the epistemology of law, and law school learning methods; evaluation of the law school potential of students; and development of students' legal reading, research, and writing skills.

(2) Preliminary training may be provided for participating students not more than six months prior to their commencement of law school courses; and

(e) Paying stipends to participating students for any period of preliminary training and for the period of law school training, as provided in § 651.30.

(Authority: 20 U.S.C. 1134l(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 651.20 How does the Secretary select an award recipient?

(a) The Secretary decides to make one or more awards and bases selection of the award recipient(s) on a judgment of what arrangements most effectively contribute to the purposes of this program (Title IX-D of the Act).

(b) The Secretary may decide to make a non-competitive award to implement the program if—in the Secretary's judgment—there is one eligible organization that is exclusively or predominantly qualified to carry out effectively the purposes of the program in the light of legislative history of the authorizing statute.

(Authority: 20 U.S.C. 1221e-3, 1134l)

Subpart E—What Conditions Must Be Met by an Award Recipient?

§ 651.30 What are the limitations on allowable costs?

Allowable costs include, but are not limited to, the following:

(a) Stipends for participating students, as determined by the Secretary, during any period of preliminary training or for the period of law school training during which the student maintains satisfactory academic progress, as determined by the Secretary.

(b) Other necessary costs for any period of training of the participating students, as determined by the Secretary.

(Authority: 20 U.S.C. 1134l(b))

PART 653—PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

Subpart A—General

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653.30 What are the eligibility requirements?
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653.40 What agreement must a scholar have with the State agency?
653.41 What are the requirements for a scholar to continue to receive payments under this program?
653.42 What are the consequences of a scholar's noncompliance with the teaching requirement?

Authority: 20 U.S.C. 1111-1111h, unless otherwise noted.

Source: 52 FR 45285, Nov. 25, 1987, unless otherwise noted.

Subpart A—General

§ 653.1 What is the Paul Douglas Teacher Scholarship Program?

Under the Paul Douglas Teacher Scholarship Program the Secretary makes available, through grants to the States, scholarships to eligible individuals to enable and encourage them to pursue teaching careers at the preschool, elementary, or secondary school level.

(Authority: 20 U.S.C. 1111)

§ 653.2 Who is eligible to participate in this program?

(a) States are eligible to apply for grants under this program.

(b) Outstanding high school graduates who wish to pursue teaching careers at the preschool, elementary, or secondary level are eligible to apply to their respective States of residence for scholarships under this program.

(Authority: 20 U.S.C. 1111b *et seq.*)

§ 653.3 What regulations apply to this program?

The following regulations apply to the Paul Douglas Teacher Scholarship Program:

(a) The regulations in this Part 653.

(b) The Education Department General Administration Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Educational Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1111-1111h *et seq.*)

§ 653.4 What definitions apply to this program?

The following definitions apply to terms used in this part:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Application
EDGAR
Elementary school
Nonprofit
Preschool
Private
Public
Secondary school
Secretary
State
State educational agency

(b) *Other definitions that apply to this part.* The following additional definitions apply to this part:

Academic year means a period of time during which a full-time student is expected to complete the equivalent of one of the following:

(1) Two semesters.

(2) Two trimesters.

(3) Three quarters.

Act means the Higher Education Act of 1965, as amended.

Award year means the period of time from July 1 of one year through June 30 of the following year.

Full-time student means a student enrolled in an institution of higher education, other than a correspondence school, who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's program.

Institution of higher education has the same meaning under this part as the same term defined in 34 CFR 668.3 of the Student Assistance General Provisions regulations.

Scholar means a scholarship recipient.

Scholarship means an award made to an individual under this part for one academic year.

(Authority: 20 U.S.C. 1111-1111h)

Subpart B—What Assistance Does the Secretary Provide Under This Program?

§ 653.10 For what purposes may a State use its payments under this program?

A State may use its payments under the Paul Douglas Teacher Scholarship Program, including principal and interest payments it receives from scholars under § 653.42, only for making payments to scholars.

(Authority: 20 U.S.C. 1111)

Subpart C—How Does a State Apply for Grants?

§ 653.20 What must a State do to receive grants under this program?

(a) To receive grants under the Paul Douglas Teacher Scholarship Program, a State shall submit an application to the Secretary for review and approval.

(b) The Secretary approves an application that—

(1) Designates as the State agency for the administration of the Paul Douglas Teacher Scholarship Program, either—

(i) The State agency which administers the State Student Incentive Grants Program under Title IV, Part A, Subpart 3 of the Act; or

(ii) The State agency which administers the Guaranteed Student Loan Program and with which the Secretary has an agreement under section 428(b) of the Act;

(2) Identifies the panel or agency which has established criteria and procedures for the selection of scholars and will select the scholars as required by §§ 653.31 and 653.32;

(3) Describes a program of activities for carrying out the purposes set forth in § 653.1 in such detail that the Secretary may determine the degree to which the State's program will accomplish those purposes. This description must include—

(i) The selection criteria and procedures to be used by the State, in the selection of scholars, which satisfy the provisions of this part; and

(ii) The procedures by which the designated State agency intends to publicize the availability of Paul Douglas Teacher Scholarships to secondary school students in the State;

(4) Explains how the criteria and procedures for the selection of scholars were developed and in what ways they reflect the State's present and projected needs for preschool, elementary, and secondary teachers in general and for those with training in specific academic disciplines;

(5) Provides assurances that—

(i) No changes will be made in the designations of an agency to administer the Paul Douglas Teacher Scholarship Program, in the selection criteria and procedures to be used in the selection of scholars, or any other aspect of the program of activities described in its application without the prior written approval of the Secretary;

(ii) No one will receive a Paul Douglas Teacher Scholarship without entering into an agreement with the designated State agency under which he or she agrees to the terms specified in § 653.40;

(iii) The terms and conditions of the agreement which the State agency will enter into with scholars under § 653.40 will be fully disclosed in the scholarship application form;

(iv) The State agency will monitor scholars' compliance with the provisions of §§ 653.40, 653.41(b), and 653.42;

(v) The State agency will make particular efforts to attract students from low-income backgrounds or who express a willingness or desire to teach in schools having less than average academic results or serving large numbers of economically disadvantaged students; and

(vi) Scholarships will be awarded without regard to sex, race, handicapping condition, creed, or economic background; and

(6) Contains a copy of the agreement referred to in paragraph (b)(5)(ii) of this section.

(c) Upon the Secretary's approval of its application, a State need not submit additional applications in order to continue to be considered for funding under this program.

(Approved by the Office of Management and Budget under control number 1840-0578)

(Authority: 20 U.S.C. 1111b)

§ 653.21 What requirements must be met by States in the administration of the program?

(a) To continue to receive payments under this part, a State shall—

(1) Provide scholarship assistance only to student, who meet the requirements of § 653.30, 653.40, and 653.041;

(2) Limit scholarship assistance to no more than four academic years for each scholar;

(3) Make reports to the Secretary that are necessary to carry out the Secretary's functions under this part;

(4) Establish and implement policies and procedures which are necessary to administer the repayment provisions of § 653.42 and, in cases of noncompliance with these provisions, implement collection and litigation procedures consistent with 34 CFR Part 682; and

(5) Except as otherwise provided in paragraph (d) of this section—

(i) Expend all funds received from the Secretary for scholarships during the award year specified by the Secretary with regard to those funds; and

(ii) Expend in that award year, for scholarships, all funds received by the State prior to that award year from principal and interest payments made under the provisions of § 653.42.

(b) A State shall award a scholarship in the amount of $5,000 for an academic year, except as otherwise provided in paragraph (c) of this section.

(c) A State shall not award a scholarship which exceeds the scholar's cost of attendance. If a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Act, would otherwise exceed the scholar's cost of attendance, as defined for the Perkins Loan Program in 34 CFR 674.11, the State shall reduce the scholarship by the amount in which the combined awards would be in excess of the scholar's cost of attendance.

(d) After awarding all scholarships for payment during an award year, as required by paragraph (a)(5) of this section, a State may reserve for expenditures in the following award year a remaining amount of funds which is less than the amount required for a scholarship as well as any funds that were awarded but were returned or not expended.

(Approved by the Office of Management and Budget under control number 1840-0595)

(Authority: 20 U.S.C. 1111c, 1111d, 1111e)

[52 FR 45285, Nov. 25, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

Subpart D—How Does a State Select Scholars Under This Program?

§ 653.30 What are the eligibility requirements?

To be selected as a scholar, an individual shall—

(a)(1) Be a United States citizen or National;

(2) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citzen or permanent resident; or

(3) Be a permanent resident of the Trust Territory of the Pacific Islands;

(b)(1) Have graduated from high school;

(2) Be scheduled to graduate from high school within 3 months of the date of the award; or

(3) Have received a certificate of high school equivalency for successfully completing the Tests of General Educational Development (GED); and

(c)(1) Rank in the top ten percent of his or her graduating class; or

(2) Have received GED test scores recognized by the State to be equivalent to ranking in the top ten percent of the high school graduates in the State, or nationally, in the academic year for which the eligibility determination is being made.

(Authority: 20 U.S.C. 1111d)

§ 653.31 Who selects the scholars?

(a) Scholars must be selected by—

(1) A seven-member statewide panel appointed by the chief State elected official, acting in consultation with the State educational agency;

(2) An existing grant agency designated by the chief State elected official and approved by the Secretary; or

(3) An existing panel designated by the chief State elected official and approved by the Secretary.

(b) A selection panel must be representative of school administrators, teachers, and parents.

(Authority: 20 U.S.C. 1111d)

§ 653.32 What are the selection criteria and procedures?

(a) The panel or agency appointed or designated by the chief State elected official in accordance with § 653.31 shall establish criteria and procedures for the selection of scholars.

(b) The selection criteria and procedures must reflect the present and projected needs of the State for preschool, elementary, and secondary teachers as required by section 553(c) of the Act and must be developed after consideration of the views of the State and local educational agencies, private educational institutions, and other interested parties as required by section 553(d) of the Act.

(c) The State shall make applications available to high schools in the State and in other locations convenient to applicants, parents, and other interested parties.

(d) The panel or agency referred to in paragraph (a) of this section shall select scholars without regard to whether applicants plan to attend publicly or privately controlled institutions.

(Authority: 20 U.S.C. 1111b, 1111d)

Subpart E—What Are the Scholarship Conditions?

§ 653.40 What agreement must a scholar have with the State agency?

(a) To receive a scholarship, an individual shall enter into an agreement with the State agency under which he or she agrees, except as otherwise provided in paragraph (b) of this section—

(1) To teach on a full-time basis, as determined by the institution or agency in which he or she is teaching, for a period of not less than two years for each year for which scholarship assistance was received—

(i) In a public or private nonprofit preschool, elementary school, or secondary school in any State; or

(ii) In a public or private nonprofit preschool, elementary, or secondary education program in any State;

(2) To fulfill the teaching obligation described in paragraph (a)(1) of this section within ten years after completing the postsecondary education degree program for which the scholarship was awarded;

(3) To provide the State agency evidence of compliance with paragraphs (a) (1) and (2) of this section and § 653.41 as required by the State agency; and

(4) To repay all or part of the scholarship plus interest and reasonable collection fees as specified in § 653.42 if the conditions of paragraphs (a) (1) and (2) of this section are not met or if the State agency determines that the individual is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level.

(b) The requirement to teach two years for each year of scholarship assistance is reduced by one-half in the case of individuals who teach on a full-time basis in a teacher shortage area that is designated by the Secretary as provided by section 428(b)(4) of the Act.

(c) The agreement referred to in paragraph (a) of this section must include—

(1) A description of the procedures under which the provisions of § 653.42 (g) through (k) will be implemented; and

(2) A description of the procedures under which a scholar may appeal any determination of noncompliance with any provisions under this part.

(Approved by the Office of Management and Budget under control number 1840-0578)

(Authority: 20 U.S.C. 1111b)

§ 653.41 What are the requirements for a scholar to continue to receive payments under this program?

(a) A State agency shall continue to make payments to a scholar under this program only during the periods that the State agency finds that the scholar meets the conditions described in paragraph (b) of this section.

(b) To maintain eligibility for a scholarship, a scholar must be—

(1) Enrolled as a full-time student in an institution of higher education that is currently accredited by a nationally recognized accrediting agency or association that the Secretary determines to be a reliable authority as to the quality of training offered, in accordance with section 1201(a) of the Act;

(2) Pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, as determined by the State agency but not including graduate study that is not required for initial teacher certification; and

(3) Maintaining satisfactory progress as determined by the institution of higher education the student is attending, in accordance with the criteria established in 34 CFR 668.16(e) of the Student Assistance General Provisions regulations.

(Authority: 20 U.S.C. 1111e)

§ 653.42 What are the consquences of a scholar's noncompliance with the teaching requirement?

(a) A scholar found by a State to be in noncompliance with the agreement entered into under § 653.40, or to be no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, shall—

(1) Repay the amount of the scholarships received, prorated according to the fraction of the teaching obligation

not completed, as determined by the State agency;

(2) Pay a simple, per annum interest charge on the outstanding principal; and

(3) Pay all reasonable collection costs as determined by the State agency.

(b) The interest charge referred to in paragraph (a)(2) of this section accrues from—

(1) The date of the initial scholarship payment if the State agency has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level; or

(2) The day after that portion of the scholarship period for which the teaching obligation has been fulfilled.

(c)(1) The interest charge referred to in paragraph (a)(2) of this section is calculated annually for the program for the twelve-month period extending from July 1 of each year through June 30 of the subsequent year, and is set at a rate that is the greater of the following rates established pursuant to section 427A of the Act for the same twelve-month period:

(i) The rate charged to new borrowers under the Guaranteed Student Loan Program (Title IV, Part B of the Act).

(ii) The rate charged to new borrowers under the Supplemental Loans for Students and PLUS Programs (sections 428A and 428B of the Act, respectively) as published annually in the FEDERAL REGISTER.

(2) For a scholar required to repay his or her scholarship—

(i) The interest charge applicable to the period extending from the date on which interest begins to accrue (determined in accordance with paragraph (b) of this section) until the date on which the scholar's repayment period begins (determined in accordance with paragraph (d) of this section) is adjusted annually and is set at the rate established for the program in accordance with paragraph (c)(1) of this section; and

(ii) The interest charge applicable during the repayment period is the rate established for the program in accordance with paragraph (c)(1) of this section that is in effect on the date on which the scholar's repayment period begins.

(d) A scholar required by paragraph (a) of this section to repay his or her scholarship shall—

(1) Enter repayment status on the first day of this first calendar month after—

(i) The State has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, but not before six months has elapsed after the cessation of the scholar's full-time enrollment in such a course of study;

(ii) The date the scholar informs the agency he or she does not plan to fulfill the teaching obligation; or

(iii) The latest date on which the scholar must have begun teaching in order to have completed the teaching obligation within ten years after completing the postsecondary education for which the scholarship was awarded, as determined by the State agency; and

(2) Make monthly or quarterly payments to the State which—

(i) Cover principal, interest, and collection costs according to a schedule established by the State which calls for complete repayment within ten years after the scholar enters repayment status, except as provided in paragraph (i) of this section; and

(ii) Amount annually to no less than $1,200 or the unpaid balance, whichever is less, unless the scholar's inability to pay this amount because of his or her financial condition has been established to the State's satisfaction.

(e) The State agency shall not require scholarship repayments amounting to more than $1,200 annually unless higher payments are needed to complete the entire repayment within the ten-year period described in paragraph (d)(2) of this section.

(f) The State agency shall capitalize any accrued interest at the time it establishes a scholar's repayment schedule.

(g) A scholar is not considered in violation of the repayment schedule established under paragraph (d) of this section during the time he or she is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Temporarily totally disabled, for a period not to exceed three years, as established by sworn affidavit of a qualified physician;

(4) Unable to secure employment for a period not to exceed twelve months by reason of the care required by a spouse who is disabled;

(5) Seeking and unable to find full-time employment for a single period not to exceed twelve months; or

(6) Unable to satisfy the terms of the repayment schedule established by the State under paragraph (d)(2)(i) of this section and is also seeking and unable to find full-time employment as a teacher in a public or private nonprofit preschool, elementary school, or secondary school, or in a public or private nonprofit preschool, elementary, or secondary education program for a single period not to exceed 27 months.

(h) To qualify for any of the exceptions in paragraph (g) of this section, a scholar shall notify the State agency of his or her claim to the exception and provide supporting documentation as required by the State agency.

(i) During the time a scholar qualifies for any of the exceptions in paragraph (g) of this section, he or she need not make the scholarship repayments referred to in paragraph (d) of this section and interest does not accrue.

(j) The State agency shall extend the ten-year scholarship repayment period established under paragraph (d) of this section by a period equal to the length of time a scholar meets any of the conditions listed in paragraph (g) of this section or if a scholar's inability to complete the scholarship repayments within this ten-year period because of his or here financial condition has been established to the State's satisfaction.

(k) The State agency shall cancel a scholar's repayment obligation if it determines—

(1) On the basis of a sworn affidavit of a qualified physician, that the scholar is unable to teach on a full-time basis because of an impairment that is expected to continue indefinitely or result in death; or

(2) On the basis of a death certificate or other evidence, conclusive under State law, that the scholar has died.

(Authority: 20 U.S.C. 1111f, 1111g)

PART 654—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

Subpart A—General

Sec.
654.1 What is the Robert C. Byrd Honors Scholarship Program?
654.2 Who is eligible to apply for an award?
654.3 What kinds of activities does the Robert C. Byrd Honors Scholarship Program assist?
654.4 What regulations apply?
654.5 What definitions apply to the Robert C. Byrd Honors Scholarship Program?

Subpart B—How Does a State Apply for a Grant?

654.10 What must a State do to receive a grant under this program?

Subpart C—How Does the Secretary Make a Grant to an SEA?

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Subpart D—How Does an Individual Apply to an SEA for a Scholarship?

654.30 How does an individual apply for a scholarship?

Subpart E—How Does an SEA Award a Scholarship to an Applicant?

654.40 What are the selection criteria and procedures?
654.41 What are the requirements for a student to receive assistance under this program?

Subpart F—What Postaward Conditions Must an SEA Meet?

654.50 What requirements must an SEA meet in the administration of this program?

AUTHORITY: 20 U.S.C. 1070d-31 to 1070d-41, unless otherwise noted.

SOURCE: 54 FR 26008, June 20, 1989, unless otherwise noted.

Subpart A—General

§ 654.1 What is the Robert C. Byrd Honors Scholarship Program?

(a) Under the Robert C. Byrd Honors Scholarship Program, the Secretary makes available, through grants to the States, scholarships to exceptionally able students for study at institutions of higher education in order to recognize and promote student excellence and achievement.

(b) This program is known as the "Byrd Scholarship Program" and scholarship recipients are known as "Byrd Scholars."

(Authority: 20 U.S.C. 1070d-31, 1070d-33)

§ 654.2 Who is eligible to apply for an award?

(a) States are eligible to apply for grants under this program.

(b) Outstanding high school graduates who have been accepted or have applied for enrollment at institutions of higher education are eligible to apply to their respective States of residence for scholarships under this program.

(Authority: 20 U.S.C. 1070d-33)

§ 654.3 What kinds of activities does the Robert C. Byrd Scholarship Program assist?

(a) An SEA may use its allotment under § 654.20(a) only for making payments to scholars.

(b) An SEA may use its allotment under § 654.20(b) for covering costs incurred in administering the program, as determined in accordance with 34 CFR Part 80, or for making payments to scholars.

(Authority: 20 U.S.C. 1070d-35, 1070d-38)

§ 654.4 What regulations apply?

The following regulations apply to the Robert C. Byrd Honors Scholarship Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this Part 654.

(Authority: 20 U.S.C. 1070d-31 *et seq.*)

§ 654.5 What definitions apply to the Robert C. Byrd Honors Scholarship Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 419B of the Act:

Secondary school
State

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

EDGAR
Secretary
State educational agency (SEA)

(c) *Other definitions.* The following definitions also apply to this part:

With respect to the postsecondary academic year, "academic year" means—

(1) A period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters, or three quarters at an institution that measures academic progress in credit hours and uses a semester, trimester, or quarter system;

(2) A period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours but does not use a semester, trimester, or quarter system; or

(3) At least 900 clock hours at an institution that measures academic progress in clock hours.

Act means the Higher Education Act of 1965, as amended.

Award period means the period of time from April 1 of one year through March 31 of the following year.

Institution of higher education means any public or private nonprofit institution of higher education as defined in 34 CFR 600.4 of the Institutional Eligibility regulations.

Recognized equivalent of a high school diploma means—

(1) A General Education Development (GED) Certificate; or

(2) A State certificate received by a student after the student has passed a State authorized examination that the State recognizes as the equivalent of a high school diploma.

Scholar means a Byrd Scholarship recipient.

Scholarship means an award made to an individual under this part.

(Authority: 20 U.S.C. 1070d-31 to 1070d-41)

Subpart B—How Does a State Apply for a Grant?

§ 654.10 What must a State do to receive a grant under this program?

(a) To receive a grant under the Byrd Scholarship Program, a State shall submit a participation agreement to the Secretary for review and approval.

(b) The Secretary approves a participation agreement if the agreement—

(1) Provides that the State, through its SEA, agrees to administer the Byrd Scholarship Program in accordance with the requirements in this part;

(2) Describes the criteria and procedures that the SEA uses in the selection of scholars in sufficient detail for the Secretary to determine the degree to which they satisfy the provisions of this part; and

(3) Provides assurances that—

(i) The SEA will make no changes in the criteria and procedures to be used in the selection of scholars without the prior written approval of the Secretary;

(ii) Each student receiving a Byrd Scholarship will meet the eligibility requirements described in § 654.41;

(iii) The SEA will select scholars solely on the basis of criteria and procedures established in accordance with the provisions of § 654.40;

(iv) The SEA will conduct outreach activities to publicize the availability of Byrd Scholarships to all seniors attending secondary schools in the State, with particular emphasis on activities designed to ensure that students from low-income and moderate-income families know about their opportunity for full participation in the program;

(v) The SEA will issue an award for $1,500 to each Byrd Scholar during an awards ceremony to be held before the latest date on which any secondary school in the State completes its secondary academic year; and

(vi) The SEA will expend the amount of Federal funds allotted to it for this program only as described in § 654.3.

(c) Upon the Secretary's approval of its agreement, an SEA need not submit additional agreements in order to be considered for funding under this program in subsequent years.

(Approved by the Office of Management and Budget under control number 1840-0612)

(Authority: 20 U.S.C. 1070d-33, 1070d-35 to 1070d-39)

Subpart C—How Does the Secretary Make a Grant to an SEA?

§ 654.20 How does the Secretary allot funds to an SEA?

From the funds appropriated for the Byrd Scholarship Program, the Secretary allots to each SEA having an approved participation agreement under § 654.10—

(a) $1,500 multiplied by the number of scholars the SEA may select under § 654.40(b)(1); and

(b) $10,000 plus 5 percent of the amount for which the SEA is eligible under paragraph (a) of this section.

(Authority: 20 U.S.C. 1070d-34)

Subpart D—How Does an Individual Apply to an SEA for a Scholarship?

§ 654.30 How does an individual apply for a scholarship?

To apply for a scholarship, an individual shall follow the application procedures established by the SEA in the State in which the individual resides.

(Authority: 20 U.S.C. 1070d-33, 1070d-35)

Subpart E—How Does an SEA Award a Scholarship to an Applicant?

§ 654.40 What are the selection criteria and procedures?

(a) The SEA shall establish criteria and procedures for the selection of scholars after consultation with school administrators, school boards, teachers, counselors, and parents.

(b) The SEA shall design the selection criteria and procedures to ensure that it—

(1) Selects ten scholars from among the residents of each Congressional district of the State for each award period for which funds are received, with the exception of the District of Columbia and the Commonwealth of Puerto Rico, which shall each establish procedures for the selection of 10 scholars from among its respective resident students for each year for which funds are received;

(2) Selects scholars solely on the basis of demonstrated outstanding academic achievement, promise of continued achievement; and the geographic consideration described in paragraph (b)(1) of this section, and—

(3) Selects scholars—

(i) Without regard to whether the secondary schools they attend are within or outside the scholars' Congressional districts or States of residency;

(ii) Without regard to whether the institutions of higher education they plan to attend are public or private or are within or outside the scholars' Congressional districts or States of residency;

(iii) Without regard to sex, race, handicapping condition, creed, or economic background; and

(iv) Without regard to their educational expenses or financial need.

(Authority: 20 U.S.C. 1070d-33, 1070d-35 to 1070d-37)

§ 654.41 What are the requirements for a student to receive assistance under this program?

(a) To receive scholarship assistance, a student must—

(1) During the same secondary academic year in which the scholarship is to be awarded—

(i) Graduate from a secondary school, or receive a recognized equivalent of a high school diploma; and

(ii) Be accepted for enrollment at an institution of higher education;

(2) Be a resident of the State to which he or she is applying for a scholarship;

(3)(i) Be a U.S. citizen or national; or

(ii) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(4) File with the institution he or she plans to attend or is attending, a Statement of Selective Service Registration Status if required by the institution in accordance with the provisions of 34 CFR Part 668 of the Student Assistance General Provisions regulations; and

(5) Pursue a course of study at an institution of higher education, as described in paragraph (b) of this section.

(b)(1) For purposes of paragraph (a)(5) of this section, a scholar is deemed to be pursuing a course of study if he or she is enrolled at an institution of higher education as at least a half-time student, as determined by the institution he or she is attending under standards applicable to all students enrolled in that scholar's course of study.

(2) In accordance with such guidelines and standards as may be established by an SEA, a scholar who has been accepted for enrollment at an institution of higher education may, without forfeiting his or her scholarship, postpone his or her enrollment at the institution of higher education for up to a period of one year beginning on the date the scholar otherwise would have enrolled in the institution after the SEA awarded him or her the scholarship.

(Authority: 20 U.S.C. 1070d-36 to 1070d-38, 50 U.S.C. App 462)

Subpart F—What Postaward Conditions Must an SEA Meet?

§ 654.50 What requirement must an SEA meet in the administration of this program?

(a) To continue to receive payments under this part, an SEA shall—

(1) Provide scholarship assistance only to students who meet the requirements in § 654.41;

(2) Select scholars in accordance with the provisions in § 654.40;

(3) Award to each scholar only one scholarship in the amount of $1,500 to be used for the first academic year of study at an institution of higher education;

(4) Make arrangments, to the extent possible, to have scholarship awards presented to the scholars during a ceremony at a convenient location by Members of the Senate and Members of the House of Representatives who represent the State (or by the Delegate in the case of the District of Columbia or the Resident Commissioner in the case of the Commonwealth of Puerto Rico);

(5) Disburse the scholarship proceeds, in the form of a warrant, voucher, or check payable to the student or copayable to the student and an official of the institution of higher education in which the student enrolls, during the awards ceremony or after confirming that the scholar has met the requirements described in § 654.41;

(6) Make no adjustments to the student's award because of the student's educational expenses or financial need;

(7) Collect any scholarship funds disbursed to a student who fails to meet the requirements of § 654.41;

(8) Make reports to the Secretary that are necessary to carry out the Secretary's functions under this part; and

(9) Except as provided in paragraph (b) of this section, expend all funds received from the Secretary for scholarships during the award period specified by the Secretary with regard to those funds.

(b)(1) After awarding all scholarships during an award period, as required by paragraph (a)(9) of this section, an SEA may reserve for scholarship expenditures in the following award period any funds that have been awarded but are subsequently returned or recovered.

(2) An SEA may reserve for administrative costs or scholarship expenditures in the following award period any funds from its administrative cost allotment that remains unexpended at the end of the award period for which the funds were granted.

(Authority: 20 U.S.C. 1070d-33, 1070d-36, 1070d-38 to 1070d-40)

PART 655—INTERNATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS

Subpart A—General

Sec.
655.1 Which programs do these regulations govern?
655.3 What regulations apply to the International Education Programs?
655.4 What definitions apply to the International Education Programs?

Subpart B—What Kinds of Projects Does the Secretary Assist?

655.10 What kinds of projects does the Secretary assist?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

655.30 How does the Secretary evaluate an application?
655.31 What general selection criteria does the Secretary use?

AUTHORITY: Secs. 601-607, Higher Education 'Act of 1965, as amended, 20 U.S.C. 1121-1127, unless otherwise noted.

SOURCE: 47 FR 14116, Apr. 1, 1982, unless otherwise noted.

Subpart A—General

§ 655.1 Which programs do these regulations govern?

The regulations in this part govern the administration of the following programs in international education:

(a) The National Resource Centers Program and the Foreign Language and Area Studies Fellowships Program (section 602 of the Higher Education Act of 1965);

(b) The Undergraduate International Studies and Foreign Language Program (section 604); and

(c) The International Research and Studies Program (section 605).

(Authority: 20 U.S.C. 1121-1127)

§ 655.3 What regulations apply to the International Education Programs?

The following regulations apply to the International Education Programs:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (formerly 45 CFR Part 100a (Direct Grant Programs)) and 34 CFR Part 77 (formerly 45 CFR Part 100c (Definitions)).

(b) The regulations in this part 655; and

(c) As appropriate, the regulations in—

(1) 34 CFR Part 656 (National Resource Centers);

(2) 34 CFR Part 657 (Foreign Language and Area Studies Fellowships Program);

(3) 34 CFR Part 658 (Undergraduate International Studies and Foreign Language Program); and

(4) 34 CFR Part 660 (International Research and Studies Program).

(Authority: 20 U.S.C. 1121-1127; 1221e-3)

§ 655.4 What definitions apply to the International Education Programs?

(a) *Definitions in EDGAR.* The following terms used in this part and 34 CFR Parts 656, 657, 658, and 660 are defined in 34 CFR Part 77:

Acquisition
Applicant
Application
Award
Budget
Contract
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grantee
Grant period
Local educational agency
Nonprofit
Project
Project period
Private
Public
Secretary
State educational agency
Supplies

(Authority: 20 U.S.C. 1121-1127)

(b) *Definitions that apply to these programs:* The following definition applies to International Education Programs:

Combination of institutions of higher education means a group of institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out a common objective, or a public or private nonprofit agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

An institution of higher education means an educational institution as defined in section 1201(a) of the Higher Education Act, as amended.

(Authority: 20 U.S.C. 1121-1127, and 1141)

Subpart B—What Kinds of Projects Does the Secretary Assist?

§ 655.10 What kinds of projects does the Secretary assist?

Subpart B of 34 CFR Parts 656, 657, 658, and 660 describes the kinds of projects that the Secretary assists under the International Education Programs.

(Authority: 20 U.S.C. 1021-1027)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 655.30 How does the Secretary evaluate an application?

The Secretary evaluates all applications for International Education Programs on the basis of—

(a) The general criteria in § 655.31; and

(b) The specific criteria in, as applicable, Subpart D of 34 CFR Parts 656, 657, 658, and 660.

(Authority: 20 U.S.C. 1121-1127)

§ 655.31 What general selection criteria does the Secretary use?

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project. In the case of faculty, the qualifications of the faculty and the degree to which that faculty is directly involved in the actual teaching and supervision of students; and

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) Other than library, facilities that the applicant plans to use are adequate (language laboratory, museums, etc.); and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 20 U.S.C. 1121-1127)

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR FOREIGN LANGUAGE AND AREA STUDIES OR FOREIGN LANGUAGE AND INTERNATIONAL STUDIES

Subpart A—General

Sec.
656.1 What is the National Resource Centers Program?
656.2 Who is eligible to receive a grant?

Sec.
656.3 What activities define a comprehensive or undergraduate National Resource Center?
656.4 What types of Centers receive grants?
656.5 What activities may be carried out?
656.6 What regulations apply?
656.7 What definitions apply?

Subpart B—How Does One Apply for a Grant?

656.10 What combined application may an institution submit?

Subpart C—How Does the Secretary Make a Grant?

656.20 How does the Secretary evaluate an application?
656.21 What selection criteria does the Secretary use to evaluate an application for a comprehensive Center?
656.22 What selection criteria does the Secretary use to evaluate an application for an undergraduate Center?
656.23 What priorities may the Secretary establish?

Subpart D—What Conditions Must Be Met by a Grantee?

656.30 What are allowable costs and what are the limitations on allowable costs?

AUTHORITY: 20 U.S.C. 1122, unless otherwise noted.

SOURCE: 53 FR 18230, May 20, 1988, unless otherwise noted.

Subpart A—General

§ 656.1 What is the National Resource Centers Program?

Under the National Resource Centers Program For Foreign Language and Areas Studies or Foreign Language and International Studies (National Resource Centers Program), the Secretary awards grants to institutions of higher education and combinations of institutions to establish, strengthen, and operate comprehensive and undergraduate Centers that will be national resources for—

(a) Stimulating the attainment of foreign language acquisition and fluency;

(b) Instruction in fields needed to provide a full understanding of the areas, regions, or countries in which the foreign language is commonly used;

(c) Research and training in international studies and the international and foreign language aspects of professional and other fields of study; and

(d) Instruction and research on issues in world affairs which concern one or more countries.

(Authority: 20 U.S.C. 1122)

§ 656.2 Who is eligible to receive a grant?

An institution of higher education or a combination of institutions of higher education is eligible to receive a grant under this part.

(Authority: 20 U.S.C. 1122)

§ 656.3 What activities define a comprehensive or undergraduate National Resource Center?

A comprehensive or undergraduate National Resource Center—

(a) Teaches at least one modern foreign language;

(b) Provides—

(1) Instruction in fields necessary to provide a full understanding of the areas, regions, or countries in which the languages taught are commonly used;

(2) Resources for training and research in international and foreign language aspects of professional and other fields of study; or

(3) Opportunities for training and research on issues in world affairs that concern one or more countries;

(c) Provides outreach and consultative services on a national, regional, and local basis;

(d) In the case of a comprehensive Center—

(1) Maintains specialized library collections; and

(2) Employs scholars engaged in research which relates to the subject area of the center; and

(e) In the case of an undergraduate Center—

(1) Maintains library holdings, including basic reference works, journals, and works in translation; and

(2) Employs faculty with strong credentials in language area, and international studies.

(Authority: 20 U.S.C.1122)

§ 656.4 What types of Centers receive grants?

The Secretary awards grants to Centers that—

(a) Focus on—

(1) A single country or on a world area (such as East Asia, Africa, or the Middle East) and offer instruction in the principal language or languages of that country or area and those disciplinary fields necessary to provide a full understanding of the country or area; or

(2) International studies or the international aspects of contemporary issues or topics (such as international business or energy) while providing instruction in modern foreign languages; and

(b) Provide training at the—

(1) Graduate, professional, and undergraduate levels, as a comprehensive center; or

(2) Undergraduate level only, as an undergraduate center.

(Authority: 20 U.S.C. 1122)

§ 656.5 What activities may be carried out?

A Center may carry out any of the activities described in §656.3 under a grant received under this part.

(Authority: 20 U.S.C. 1122)

§ 656.6 What regulations apply?

The following regulations apply to this part:

(a) CFR Part 656.

(b) The regulations in this Part 656.

(c) The Education Department General Administrative Regulations [EDGAR] in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions that apply to Department Regulations), 34 CFR Part 78 (Education Appeal Board), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1122)

[53 FR 18230, May 20, 1988, as amended at 55 FR 21716, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21716, May 25, 1990, § 656.6(c) was amended by removing the word "and", and adding a comma in its place and by adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence, effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 656.7 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR Part 655.

(b) "Area studies" means a program of comprehensive study of the aspects of a world area's society or societies, including study of history, culture, economy, politics, international relations, and languages.

(c) "Center" means an administrative unit of an institution of higher education that has direct access to highly qualified faculty and library resources, and coordinates a concentrated effort of educational resources, including language training and various academic disciplines, in the area and subject matters described in § 656.3.

(d) "Comprehensive Center" means a Center that—

(1) Contributes significantly to the national interest in advanced research and scholarship;

(2) Offers intensive language instruction;

(3) Maintains important library collections related to the area of its specialization; and

(4) Makes training available to a graduate, professional, and undergraduate clientele.

(e) For purposes of this section, "intensive language instruction" means instruction of at least 5 contact hours per week during the academic year or the equivalent of a full academic year of language instruction during the summer.

(f) "Undergraduate Center" means an administrative unit of an institution of higher education that—

(1) Contributes significantly to the national interest through the education of students who matriculate into advanced language and area studies programs or professional school programs;

(2) Incorporates substantial international and foreign language content into baccalaureate degree program;

(3) Makes training available predominantly to undergraduate students; and

(4) Engages in research, curriculum development, and community outreach.

(Authority: 20 U.S.C. 1122)

Subpart B—How Does One Apply for a Grant?

§ 656.10 What combined application may an institution submit?

An institution that wishes to apply for a grant under this part and for an allocation of fellowships under 34 CFR Part 657 may submit one application for both.

(Authority: 20 U.S.C. 1122)

Subpart C—How Does the Secretary Make a Grant?

§ 656.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a comprehensive Center under the criteria contained in § 656.21, and for an undergraduate Center under the criteria contained in § 656.22.

(b) In general, the Secretary awards up to 100 possible points for these criteria. However, if the criterion in § 656.21(1) or § 656.22(1) is used, the Secretary awards up to 120 possible points. The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1122)

§ 656.21 What selection criteria does the Secretary use to evaluate an application for a comprehensive Center?

The Secretary uses the following criteria in evaluating an application for a comprehensive Center:

(a) *Plan of operation.* (10) (See 34 CFR 655.31(a)).

(b) *Quality of key personnel.* (15) (See 34 CFR 655.31(b)).

(c) *Budget and cost effectiveness.* (5) (See 34 CFR 655.31(c)).

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d)).

(e) *Commitment to the subject area on which the center focuses.* (5) The Secretary reviews each application to determine—

(1) The degree of institutional commitment to the subject area for which funding is sought as shown by the institution's previous record of accomplishment and support for that subject area; and

(2) The extent to which the institution will provide financial and other support to the Center, faculty members, and qualified students in fields related to the Center.

(f) *Strength of library.* (10) The Secretary reviews each application to determine—

(1) The strength of the institution's library in the subject area and the educational levels (graduate, professional, undergraduate) on which the Center focuses; and

(2) The extent to which the institution will provide financial support for the acquisition of library materials and for library staff in the subject area of the Center.

(g) *Quality of the Center's instructional program.* (20) The Secretary reviews each application to determine—

(1) The quality and extent of the Center's course offerings;

(2) The quality and extent of the Center's language training program including the adequacy of its instructional resources; and

(3) The extent to which the Center employs a sufficient number of scholars or teaching faculty to enable the Center to carry out its purposes.

(h) *Quality of the Center's relationships within the institution.* (10) The Secretary reviews each application to determine the extent to which the Center—

(1) Provides multi- and interdisciplinary instruction; and

(2) Has entered into cooperative arrangements with departments, schools, and professional programs of the institution.

(i) *Overseas activities.* (5) The Secretary reviews each application to determine—

(1) The adequacy of the provisions for relevant overseas experience for

faculty and students in the Center's program; and

(2) The extent to which provision is made for cooperation with foreign educators, institutions, organizations, and governments.

(j) *Need and potential impact.* (10) The Secretary reviews each application to determine—

(1) The extent to which the proposed activities serve national needs;

(2) The extent to which an improved program in language and area studies or language and international studies will be available at the applicant institution at the termination of the grant period; and

(3) The potential impact of the proposed project in improving the knowledge of languages, areas, issues in world affairs which concern one or more countries, or international studies at the national level and in providing a national example of excellence and innovation in the subject area on which the Center focuses.

(k) *Outreach activities.* (5) The Secretary reviews each application to determine—

(1) The quality and extent of the services the Center will provide to persons and organizations outside the Center at national, regional, and local levels; and

(2) The contribution of these outreach services to activities such as curriculum development, professional training, and public understanding.

(l) *Degree to which priorities are served.* (20) If, under the provisions of § 656.23, the Secretary establishes specific priorities for Centers, the Secretary considers the degree to which those priorities are being served.

(Approved by the Office of Management and Budget under control number 1840-0068)

(Authority: 20 U.S.C. 1122)

[53 FR 18230, May 20, 1988, as amended at 53 FR 49147, Dec. 6, 1988]

§ 656.22 What selection criteria does the Secretary use to evaluate an application for an undergraduate Center?

The Secretary uses the following criteria in evaluating an application for an undergraduate Center:

(a) *Plan of operation.* (10) [See 34 CFR 655.31(a)].

(b) *Quality of key personnel.* (15) [See 34 CFR 655.31(b)].

(c) *Budget and cost effectiveness.* (5) [See 34 CFR 655.31(c)].

(d) *Evaluation plan.* (5) [See 34 CFR 655.31(d)].

(e) *Commitment to the subject area on which the Center focuses.* (10) The Secretary reviews each application to determine—

(1) The degree of institutional commitment to the subject area for which funding is sought as shown by the institution's previous record of accomplishment and support for that subject area;

(2) The extent to which the institution is committed to the center by providing financial and other support to the Center and to tenured faculty members of the Center; and

(3) The extent to which students matriculate into advanced language and area or international studies programs or related professional programs.

(f) *Strength of library.* (10) The Secretary reviews each application to determine—

(1) The strength of the institution's library in the subject area on which the Center focuses; and

(2) The extent to which the institution provides financial support for the acquisition of library materials and for library staff in that subject area.

(g) *Quality of the Center's instructional program.* (20) The Secretary reviews each application to determine—

(1) The quality and extent of the Center's course offerings;

(2) The quality of the Center's language training program, including the adequacy of instructional resources; and

(3) The extent to which the Center employs a sufficient number of scholars or teaching faculty to enable the center to carry out its purposes.

(h) *Quality of the center's relationships within the institution.* (5) The Secretary reviews each application to determine—

(1) The extent to which the Center provides multi- and interdisciplinary instruction;

(2) The extent to which the Center has entered into cooperative arrangements with departments, schools, and

professional programs of the institution; and

(3) The extent to which substantial instruction in the subject area and languages on which the Center focuses have been incorporated into baccalaureate degree programs.

(i) *Overseas activities.* (5) The Secretary reviews each application to determine—

(1) The adequacy of the provisions for relevant overseas experience for faculty and students in the Center's program; and

(2) The extent to which provision is made for cooperation with foreign educators, institutions, and governments.

(j) *Need and potential impact.* (10) The Secretary reviews each application to determine—

(1) The extent to which the proposed activities serve national needs;

(2) The extent to which an improved program in language and area studies or language and international studies will be available at the applicant institution at the termination of the grant period; and

(3) The potential impact of the proposed project—those activities for which funding is requested—in improving the knowledge of languages, areas, or international studies at the national level and in providing a national example of excellence and innovation for undergraduate education in the subject area on which the Center focuses.

(k) *Outreach activities.* (5) The Secretary reviews each application to determine—

(1) The quality and extent of the services the Center provides to persons and organizations outside the Center at national, regional, and local levels; and

(2) The contribution of these outreach services to curriculum development, faculty development, pre-professional training, and public understanding.

(l) *Degree to which priorities are served.* (20) If, under the provisions of § 656.23, the Secretary establishes specific priorities for Centers, the Secretary considers the degree to which those priorities are being served.

(Approved by the Office of Management and Budget under control number 1840-0068)

(Authority: 20 U.S.C. 1122)

[53 FR 18230, May 20, 1988, as amended at 53 FR 49147, Dec. 6, 1988]

§ 656.23 What priorities may the Secretary establish?

(a) The Secretary may select one or more of the following funding priorities:

(1) Specific countries or world areas, such as, for example, East Asia, Africa, or the Middle East.

(2) Specific focus of a center, such as, for example, a single world area; international studies; a particular issue or topic, e.g., business, development issues, or energy; or any combination.

(3) Level or intensiveness of language instruction, such as intermediate or advanced language instruction, or instruction at an intensity of 10 contact hours per week.

(4) Types of activities to be carried out, for example, cooperative summer intensive language programs or teacher training activities.

(b) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(Authority 20 U.S.C. 1122)

Subpart D—What Conditions Must Be Met By a Grantee?

§ 656.30 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided under paragraph (b) of this section, a grant awarded under this part may be used to pay all or part of the cost of establishing, strengthening, or operating a comprehensive or undergraduate Center including, but not limited to, the cost of—

(1) Faculty and staff salaries and travel;

(2) Library acquisitions;

(3) Teaching and research materials;

(4) Curriculum planning and development; and

(5) Bringing visiting scholars and faculty to the Center to teach, con-

duct research, or participate in conferences or workshops.

(b) *Limitations on allowable costs. The following are limitations on allowable costs:*

(1) Equipment costs exceeding ten percent of the grant are not allowable.

(2) Funds for undergraduate travel are allowable only in conjunction with a formal program of supervised study in the subject area on which the center focuses.

(3) Grant funds may not be used to supplant funds normally used by applicants for purposes of this part.

(Authority: 20 U.S.C. 1122)

PART 657—FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM

Subpart A—General

Sec.
657.1 What is the Foreign Language and Area Studies Fellowship Program?
657.2 Who is eligible to receive an allocation of fellowships?
657.3 Who is eligible to receive a fellowship?
657.4 What regulations apply?
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Subpart B—How Does an Institution or a Student Submit an Application?

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657.30 What is the duration of and what are the limitations on fellowships awarded to individuals by institutions?
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657.33 What are the limitations on the use of funds for overseas fellowships?
657.34 Under what circumstances must an institution terminate a fellowship?

AUTHORITY: 20 U.S.C. 1122, unless otherwise noted.

SOURCE: 53 FR 10821, Apr. 1, 1988, unless otherwise noted.

Subpart A—General

§ 657.1 What is the Foreign Language and Area Studies Fellowship Program?

Under the Foreign Language and Area Studies Program, the Secretary awards fellowships, through institutions of higher education, to students who are—

(a) Enrolled for advanced training in a center or program approved by the Secretary under this part; and

(b) Undergoing competency-based modern foreign language training or training in a program for which competency-based modern foreign language instruction is being developed, in combination with area studies, international studies, or the international aspects of professional studies.

(Authority: 20 U.S.C. 1122)

§ 657.2 Who is eligible to receive an allocation of fellowships?

(a) The Secretary awards an allocation of fellowships to an institution of higher education or to a combination of institutions of higher education that—

(1) Operates a center or program approved by the Secretary under this part;

(2) Teaches modern foreign languages under a program described in paragraph (b) of this section; and

(3) In combination with the teaching described in paragraph (a)(2) of this section—

(i) Provides instruction in the disciplines needed for a full understanding of the area, regions, or countries in which the foreign languages are commonly used; or

(ii) Conducts training and research in international studies, the international aspects of professional and other fields of study, or issues in world affairs that concern one or more countries.

(b) In teaching those modern foreign languages for which an allocation of fellowships is made available, the institution must be either using a program of competency-based training or developing a competency-based training program.

(c) The Secretary uses the criteria in § 657.21 both to approve centers and programs for the purpose of receiving an allocation of fellowships and to evaluate applications for an allocation of fellowships.

(d) An institution does not need to receive a grant under the National Resource Center Program 34 CFR Part 656, or the Undergraduate International Studies and Foreign Language Program, 34 CFR Part 658, to receive an allocation of fellowships under this part.

(Authority: 20 U.S.C. 1122)

§ 657.3 Who is eligible to receive a fellowship?

A student is eligible to receive a fellowship if the student—

(a)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Is accepted for enrollment or is enrolled—

(1) In an institution receiving an allocation of fellowships; and

(2) In a program that combines modern foreign language training with—

(i) Area or international studies; or

(ii) Research and training in the international aspects of professional and other fields of study;

(c) Shows potential for high academic achievement based on such indices as grade point average, class ranking, or similar measures that the institution may determine; and

(d) Is enrolled in a program of modern foreign language training in a language for which the institution has developed or is developing competency-based instruction.

(Approved by the Office of Management and Budget under control number 1840-0068)

(Authority: 20 U.S.C. 1122)

[53 FR 10821, Apr. 1, 1988, as amended at 53 FR 49147, Dec. 6, 1988]

§ 657.4 What regulations apply?

The following regulations apply to the program:

(a) 34 CFR Part 655.

(b) The regulations in this Part 657.

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions That Apply To Department Regulations), 34 CFR Part 78 (Education Appeal Board), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1122)

[53 FR 10821, Apr. 1, 1988, as amended at 55 FR 21716, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21716, May 25, 1990, § 657.4(c) was amended by removing the word "and", and adding a comma in its place and by adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence, effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 657.5 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR 655.4.

(b) "Center" means an administrative unit of an institution of higher education that has direct access to highly qualified faculty and library resources, and coordinates a concentrated effort of educational activities, including training in modern foreign languages and various academic disciplines, in its subject area.

(c) "Fellow" means a person who receives a fellowship under this part.

(d) "Fellowship" means the payment a fellow receives under this part.

(e) "Program" means a concentration of educational resources and activities in modern foreign language training and related studies.

(f) "Competency-based language training" means a training program which has defined functional language use objectives and whose evaluation measures for students can be linked to established national standards.

(Authority: 20 U.S.C. 1122)

Subpart B—How Does an Institution or a Student Submit an Application?

§ 657.10 What combined application may an institution submit?

An institution that wishes to apply for an allocation of fellowships and for a grant to operate a Center under 34 CFR Part 656 may submit a combined application for both grants to the Secretary.

(Authority: 20 U.S.C. 1122)

§ 657.11 How does a student apply for a fellowship?

(a) A student shall apply for a fellowship directly to an institution of higher education that has received an allocation of fellowships.

(b) The applicant shall provide sufficient information to enable the institution to determine whether he or she is eligible to receive a fellowship and whether he or she should be selected to receive a fellowship.

(Authority: 20 U.S.C. 1122)

Subpart C—How Does the Secretary Select an Institution for an Allocation of Fellowships?

§ 657.20 How does the Secretary evaluate an institutional application for an allocation of fellowships?

(a) The Secretary evaluates an application for an allocation of fellowships on the basis of the quality of the applicant's center or program. The applicant's center or program is evaluated and approved under the criteria in § 657.21.

(b) In general, the Secretary awards up to 100 possible points for these criteria. However, if priority criteria are used, the Secretary awards up to 120 possible points. The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1122)

§ 657.21 What criteria does the Secretary use in selecting institutions for an allocation of fellowships?

The Secretary selects applicants for an allocation of fellowships on the basis of the quality of the applicant's center or program. The Secretary uses the following criteria in evaluating the applicant's center or program:

(a) *Plan of operation.* (5) (See 34 CFR 655.31(a)).

(b) *Quality of key personnel.* (15) (See 34 CFR 655.31(b)).

(c) *Evaluation plan.* (5) (See 34 CFR 655.31(d)).

(d) *Commitment to the subject area on which the center or program focuses.* (5) The Secretary reviews each application to determine—

(1) The degree of institutional commitment to the subject area of the center or program as shown by the institution's previous record of accomplishment and support for that subject area; and

(2) The extent to which the institution provides financial and other support to the center or program, to faculty members of the center or program, and to qualified students in fields related to the center or program.

(e) *Strength of library.* (15) The Secretary reviews each application to determine—

(1) The strength of the institution's library in the subject area of the center or program; and

(2) The extent to which the institution provides financial support for the acquisition of library materials and for library staff in that subject area.

(f) *Quality of the center's or program's instructional program.* (40) The Secretary reviews each application to determine—

(1) The quality and extent of the course offerings (15);

(2) The quality of the modern foreign language training program, as measured by the scope of the competency-based language instruction which is being used or developed, the adequacy of instructional resources, and the nature of language proficiency requirements (15);

(3) The extent to which a sufficient number of scholars or teaching faculty are employed to enable the center or program to carry out its purposes (5); and

(4) The relationship of the language program to area studies, international studies, or international aspects of professional studies (5).

(g) *Quality of the center's or program's relationships within the institution.* (5) The Secretary reviews each application to determine—

(1) The extent to which multi- and interdisciplinary instruction is included; and

(2) The extent to which cooperative arrangements with departments, schools, and professional programs of the institution exist.

(h) *Overseas activities.* (5) The Secretary reviews each application to determine—

(1) The adequacy of the provisions for relevant overseas experience for faculty and students; and

(2) The extent to which provision is made for cooperation with foreign educators, institutions, and governments.

(i) *Need and potential impact.* (5) The Secretary reviews each application to determine—

(1) The extent to which the center or program supports training that is needed nationwide;

(2) The extent to which the center or program's plans for selection and training of fellows in language and area studies or language and international studies will foster an improved supply of specialists in the subject area of the center or program.

(j) *Priorities.* (20) If one or more priorities have been established under § 657.22, the Secretary reviews each application for information that shows the extent to which the center or program meets these priorities.

(Approved by the Office of Management and Budget under control number 1840-0068)

(Authority: 20 U.S.C. 1122)

[53 FR 10821, Apr. 1, 1988, as amended at 53 FR 49147, Dec. 6, 1988]

§ 657.22 What priorities may the Secretary establish?

(a) The Secretary may establish one or more of the following priorities for the allocation of fellowships—

(1) Specific world areas, or countries, such as East Asia or Mexico;

(2) Languages, such as Chinese;

(3) Levels of language offerings;

(4) Academic disciplines, such as linguistics or sociology;

(5) Professional studies, such as business, law, or education;

(6) Particular subjects, such as population growth and planning, or international trade and business; or

(7) A combination of any of these categories.

(b) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1122)

Subpart D—What Conditions Must Be Met by a Grantee and a Fellow?

§ 657.30 What is the duration of and what are the limitations on fellowships awarded to individuals by institutions?

(a) *Duration.* An institution may award a fellowship to a student for—

(1) One academic year; or

(2) One summer session if the summer session provides the fellow with the equivalent of one academic year of modern foreign language study.

(b) *Vacancies.* If a fellow vacates a fellowship before the end of an award period, the institution to which the fellowship is allocated may reaward the balance of the fellowship to another student if—

(1) The student meets the eligibility requirements in § 657.3; and

(2) The remaining fellowship period comprises at least one full academic quarter, semester, trimester or summer session as described in paragraph (a) (2) of this section.

(Authority: 20 U.S.C. 1122)

§ 657.31 What is the amount of a fellowship?

(a)(1) An institution shall award a fellowship in an amount that covers the cost of the fellow's tuition and fees and an allowance for subsistence.

(2) If permitted by the Secretary, the institution may include an allowance for travel and an allowance for dependents.

(b) The Secretary announces in the annual application notice published in the FEDERAL REGISTER—

(1) The amount of subsistence allowances which may range from $5,000 to $10,000 for an academic year and from $1,250 to $2,000 for a summer session;

(2) Whether dependents' and travel allowances will be permitted; and

(3) The amount of dependents' and travel allowances which may be up to $500 per dependent for the dependency allowance and up to the lesser of $750 or the actual travel cost for the travel allowance.

(c) Funds for undergraduate travel are allowable only in conjunction with a formal program of supervised study in the subject area on which the center or program focuses.

(Authority: 20 U.S.C. 1122)

§ 657.32 What is the payment procedure for fellowships?

(a) An institution shall pay a fellow his or her subsistence and any other allowance in installments during the term of the fellowship.

(b) An institution shall make a payment only to a fellow who is in good standing and is making satisfactory progress.

(c) The institution shall make appropriate adjustments of any overpayment or underpayment to a fellow.

(Authority: 20 U.S.C. 1122)

§ 657.33 What are the limitations on the use of funds for overseas fellowships?

(a) Before awarding a fellowship for use outside the United States, an institution shall obtain the approval of the Secretary.

(b) The Secretary may approve the use of a fellowship outside the United States if the student is—

(1) Enrolled in an advanced overseas modern foreign language program approved by the institution at which the student is enrolled in the United States; or

(2) Engaged in research that cannot be done effectively in the United States and is affiliated with an institution of higher education or other appropriate organization in the host country.

(Authority: 20 U.S.C. 1122)

§ 657.34 Under what circumstances must an institution terminate a fellowship?

An institution shall terminate a fellowship if—

(a) The fellow is not making satisfactory progress, is no longer enrolled, or is no longer in good standing at the institution; or

(b) The fellow fails to follow the course of study, including modern foreign language study, for which he or she applied, unless a revised course of study is otherwise approvable under this part.

(Authority: 20 U.S.C. 1122)

PART 658—UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAM

Subpart A—General

Sec.

658.1 What is the Undergraduate International Studies and Foreign Language Program?
658.2 Who is eligible to apply for assistance under this program?
658.3 What regulations apply to the Undergraduate International Studies and Foreign Language Program?
658.4 What definitions apply to the Undergraduate International Studies and Foreign Language Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

658.10 For what kinds of projects does the Secretary assist institutions of higher education?
658.11 What projects and activities may a grantee conduct under this program?
658.12 For what kinds of projects does the Secretary assist associations and organizations?

Sec.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

658.30 How does the Secretary evaluate an application?
658.31 What selection criteria does the Secretary use?
658.32 What additional criteria does the Secretary apply to institutional applications?
658.33 What additional criterion does the Secretary apply to applications from organizations and associations?
658.34 What additional factors does the Secretary consider in selecting grant recipients?

Subpart E—What Conditions Must Be Met by a Grantee?

658.40 What are the limitations on allowable costs?

AUTHORITY: 20 U.S.C. 1124, unless otherwise noted.

SOURCE: 47 FR 14122, Apr. 1, 1982, unless otherwise noted.

Subpart A—General

§ 658.1 What is the Undergraduate International Studies and Foreign Language Program?

The Undergraduate International Studies and Foreign Language Program is designed to provide Federal financial assistance to institutions of higher education or combinations of such institutions to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

(Authority: 20 U.S.C. 1124)

§ 658.2 Who is eligible to apply for assistance under this program?

The following are eligible to apply for assistance under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public and private nonprofit agencies and organizations, including professional and scholarly associations.

(Authority: 20 U.S.C. 1124)

§ 658.3 What regulations apply to the Undergraduate International Studies and Foreign Language Program?

The following regulations apply to this program:

(a) 34 CFR Part 655.

(b) The regulations in this Part 658.

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1121-1127)

[47 FR 14122, Apr. 1, 1982, as amended at 55 FR 21716, May 25, 1990]

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§ 658.4 What definitions apply to the Undergraduate International Studies and Foreign Language Program?

The definitions in 34 CFR 655.4 apply to this program.

(Authority: 20 U.S.C. 1121-1127)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 658.10 For what kinds of projects does the Secretary assist institutions of higher education?

(a) The Secretary may provide assistance to an institution of higher education or a combination of institutions to plan, develop, and carry out a program to strengthen and improve undergraduate instruction in international studies and foreign languages.

(b) The Secretary gives consideration to an applicant that proposes a program that—

(1) Initiates new or revised courses in international studies;

(2) Makes instruction in foreign languages available to students in the program; and

(3) Takes place primarily in the United States.

(c) The program shall focus on—

(1) International or global studies;

(2) A single world area and its languages; or

(3) Issues or topics, such as environmental studies or international business.

(Authority: 20 U.S.C. 1124(a))

[47 FR 14122, Apr. 1, 1982, as amended at 52 FR 28422, July 29, 1987]

§ 658.11 What projects and activities may a grantee conduct under this program?

The Secretary awards grants under this part to assist in carrying out projects and activities that are an integral part of a program to improve undergraduate instruction in international studies and foreign languages. These include projects such as:

(a) Planning for the development and expansion of the undergraudate curriculum in international studies and foreign languages;

(b) Teaching, research, curriculum development, and related activities such as—

(i) Conducting faculty workshops, conferences, and special lectures;

(ii) Developing and testing new curricular materials, including self-instructional materials in foreign languages, or specialized language materials dealing with a particular subject matter (such as business or law);

(iii) Initiating new and revised courses in international studies and foreign languages;

(iv) Developing ways to use the media, or developing projects to improve the effectiveness of sharing resources and materials;

(v) Developing standards to identify successful strategies for incorporating international aspects into the curriculum;

(c) Training faculty members in foreign countries or bringing foreign scholars to U.S. institutions;

(d) Placing U.S. faculty members in internships with international associations or with governmental and nongovernmental organizations in the U.S. or abroad t improve their understanding of international affairs;

(e) Initiating special bi-national or bilateral programs;

(f) Integrating undergraduate education with terminal master's degree programs;

(g) Developing an international dimension in pre- and in-service teacher training; and

(h) Combining the teaching of international studies with professional or pre-professional training.

(Authority: 20 U.S.C. 1124)

[47 FR 14122, Apr. 1, 1982, as amended at 52 FR 28422, July 29, 1987]

§ 658.12 For what kinds of projects does the Secretary assist associations and organizations?

The Secretary may award grants under this part to public and private nonprofit agencies and organizations including scholarly associations, that propose projects that will make an especially significant contribution to strengthening and improving undergraduate instruction in international studies and foreign languages at institutions of higher education.

(Authority: 20 U.S.C. 1124(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 658.30 How does the Secretary evaluate an application?

(a)(1) The Secretary evaluates an application from an institution of higher education or a combination of such institutions on the basis of the criteria in §§ 658.31 and 658.32. The Secretary awards up to 85 possible points for these criteria.

(2) Under §§ 658.31 and 658.32 the Secretary evaluates applications for funding on a percentage score based upon the number of points an application receives and the maximum number of points possible.

(b)(1) The Secretary evaluates an application from an agency or organization or professional or scholarly association on the basis of the criteria in

§§ 658.31 and 658.33. The Secretary awards up to 75 possible points for these criteria.

(2) Under §§ 658.31 and 658.33 the Secretary evaluates applications for funding on a percentage score based upon the number of points an application receives and the maximum number of points possible.

(c) The maximum possible points for each criterion are indicated in parentheses.

(Authority: 20 U.S.C. 1124)

§ 658.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating an application for a project under this part.

(a) *Plan of operation.* (10) (See 34 CFR 655. 31(a))

(b) *Quality of key personnel.* (10) (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (10) (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (10) (See 34 CFR 655.31(e))

(Authority: 20 U.S.C. 1124)

§ 658.32 What additional criteria does the Secretary apply to institutional applications?

In addition to the criteria referred to in § 658.31, the Secretary applies the following criteria to applications submitted by an institution of higher education or a combination of such institutions:

(a) *Commitment to international studies.* (15)

(1) The Secretary reviews each application for information that shows the applicant's commitment to the international studies program.

(2) The Secretary looks for information that shows—

(i) The institution's current strength as measured by the number of international studies courses offered;

(ii) The extent to which planning for the implementation of the proposed program has involved the applicant's faculty, as well as administrators;

(iii) The institutional commitment to the establishment, operation, and continuation of the program as demonstrated by optimal use of available personnel and other resources; and

(iv) The institutional commitment to the program as demonstrated by the use of institutional funds in support of the program's objectives.

(b) *Elements of the proposed international studies program.* (15)

(1) The Secretary reviews each application for information that shows the nature of the applicant's proposed international studies program.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed activities will contribute to the implementation of a program in international studies and foreign languages at the applicant institution;

(ii) The interdisciplinary aspects of the program;

(iii) The number of new and revised courses with an international perspective that will be added to the institution's programs; and

(iv) The applicant's plans to improve or expand language instruction.

(c) *Need for and prospective results of the proposed program.* (10)

(1) The Secretary reviews each application for information that shows the need for and the prospective results of the applicant's proposed program.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed activities are needed at the applicant institution;

(ii) The extent to which the proposed use of Federal funds will result in the implementation of a program in international studies and foreign languages at the applicant institution;

(iii) The likelihood that the activities initiated with Federal funds will be continued after Federal assistance is terminated; and

(iv) The adequacy of the provisions for sharing the materials and results of the program with other institutions of higher education.

(Authority: 20 U.S.C. 1124)

[47 FR 14122, Apr. 1, 1982, as amended at 52 FR 28422, July 29, 1987]

§ 658.33 What additional criterion does the Secretary apply to applications from organizations and associations?

In addition to the criteria referred to in § 658.31, the Secretary applies the following criterion to applications from organizations and associations:

(a) Need for and potential impact of the proposed project in improving international studies and the study of modern foreign language at the undergraduate level. (30)

(b) The Secretary reviews each application for information that shows the need for and the potential impact of the applicant's proposed projects in improving international studies and the study of modern foreign language at the undergraduate level.

(1) The Secretary looks for information that shows—

(i) The extent to which the applicant's proposed apportionment of Federal funds among the various budget categories for the proposed project will contribute to achieving results;

(ii) The international nature and contemporary relevance of the proposed project;

(iii) The extent to which the proposed project will make an especially significant contribution to the improvement of the teaching of international studies or modern foreign languages at the undergraduate level; and

(iv) The adequacy of the applicant's provisions for sharing the materials and results of the proposed project with the higher education community.

(Authority: 20 U.S.C. 1124(b))

§ 658.34 What additional factors does the Secretary consider in selecting grant recipients?

In addition to applying the selection criteria in, as appropriate, §§ 658.31, 658.32, and 658.33, the Secretary, to the extent practicable and consistent with the criterion of excellence, seeks to—

(a) Achieve an equitable geographic distribution of awards throughout the U.S.; and

(b) Encourage diversity by ensuring that a variety of types of projects and institutions receive funding.

(Authority: 20 U.S.C. 1124 and 1126; H. Rept. 96-1337 96 Cong. 2d. Sess. p. 189)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 658.40 What are the limitations on allowable costs?

Equipment costs may not exceed five percent of the grant amount.

(Authority: 20 U.S.C. 1124)

PART 660—THE INTERNATIONAL RESEARCH AND STUDIES PROGRAM

Subpart A—General

Sec.

660.1 What is the International Research and Studies Program?
660.2 Who is eligible to apply for grants under this program?
660.3 What regulations apply to the International Research and Studies Program?
660.4 What definitions apply to the International Research and Studies Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

660.10 What activities does the Secretary assist?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

660.30 How does the Secretary evaluate an application?
660.31 What selection criteria does the Secretary use for all applications for a grant?
660.32 What additional selection criteria does the Secretary use for an application for a research project, a survey, or a study?
660.33 What additional selection criteria does the Secretary use for an application to develop specialized instructional materials?
660.34 What priorities may the Secretary establish?
660.35 What additional factors does the Secretary consider in selecting grant recipients?

Subpart E—What Conditions Must Be Met by a Grantee?

660.40 What are the limitations on allowable costs?

Authority: 20 U.S.C. 1125, unless otherwise noted.

SOURCE: 47 FR 14124, Apr. 1, 1982, unless otherwise noted.

Subpart A—General

§ 660.1 What is the International Research and Studies Program?

The Secretary may, directly or through grants or contracts, conduct research and studies which contribute to the purposes of the International Education Program authorized by Part A of Title VI of the Higher Education Act of 1965. The research and studies may include, but are not limited to—

(a) Studies and surveys to determine the need for increased or improved instruction in modern foreign languages and in other fields needed to provide a full understanding of the places in which such languages are commonly used;

(b) Research on more effective methods of providing instruction and evaluating competency in such foreign languages and other fields;

(c) Research on the application of proficiency tests and standards across all areas of foreign language instruction and classroom use; and

(d) The development and publication of specialized materials for use in providing instruction and evaluation or for use in training individuals to provide instruction and evaluation.

(Authority: 20 U.S.C. 1125)

[47 FR 14124, Apr. 1, 1982, as amended at 52 FR 28424, July 29, 1987]

§ 660.2 Who is eligible to apply for grants under this program?

Public and private agencies, organizations, and institutions, and individuals are eligible to apply for grants under this part.

(Authority: 20 U.S.C. 1125)

§ 660.3 What regulations apply to the International Research and Studies Program?

The following regulations apply to this program:

(a) 34 CFR Part 655;

(b) The regulations in this Part 660; and

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(Authority: 20 U.S.C. 1121-1127)

§ 660.4 What definitions apply to the International Research and Studies Program?

The definitions in 34 CFR 655.4 apply to this program.

(Authority: U.S.C. 1121-1127)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 660.10 What activities does the Secretary assist?

An applicant may apply for funds to carry out any of the following types of activities:

(a) Studies and surveys to determine the need for increased or improved instruction in—

(1) Modern foreign languages; and

(2) Area studies and related fields needed to provide full understanding of the places in which those languages are commonly used.

(b) Research and studies—

(1) On more effective methods of instruction in modern foreign languages, area studies, or related fields;

(2) To evaluate competency in those foreign languages, area studies, or related fields; or

(3) On the application of proficiency tests and standards across all areas of foreign language instruction and classroom use.

(c) The development and publication of specialized materials—

(1) For use by students and teachers of modern foreign languages, area studies, and related fields; and

(2) For use in—

(i) Providing such instruction and evaluation; or

(ii) Training individuals to provide such instruction and evaluation.

(d) Research, surveys, studies, or the development of instructional materials that serve to enhance international understanding.

(e) Other research or material development projects that further the purposes of the International Education

Program authorized by Part A of Title VI of the (HEA).

(Authority: 20 U.S.C. 1125)

[47 FR 14124, Apr. 1, 1982, as amended at 52 FR 28424, July 29, 1987]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 660.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a research project, a study, or a survey on the basis of the criteria in §§ 660.31 and 660.32.

(b) The Secretary evaluates an application for the development of specialized instructional materials on the basis of the criteria in §§ 660.31 and 660.33

(c) The Secretary awards up to 100 possible points for these criteria. The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1125)

§ 660.31 What selection criteria does the Secretary use for all applications for a grant?

The Secretary uses the following criteria in evaluating applications for research or studies projects:

(a) *Plan of operation.* (10) (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (10) (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (10) (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (5) (See 34 CFR 655.31(e))

(Authority: 20 U.S.C. 1125)

§ 660.32 What additional selection criteria does the Secretary use for an application for a research project, a survey, or a study?

In addition to the criteria referred to in § 660.31, the Secretary applies the following criteria to an application for a research project, study, or survey:

(a) *Need for the project.* (10) The Secretary reviews each application for information that shows—

(1) A need for the proposed project in the field of study on which the project focuses; and

(2) That the proposed project will provide information about the present and future needs of the United States for study in foreign language and other related fields.

(b) *Usefulness of expected results.* (10) The Secretary reviews each application for information that shows the extent to which the results of the proposed project are likely to be used by other research projects or programs with similar objectives.

(c) *Development of new knowledge.* (10) The Secretary reviews each application for information that shows that the extent to which the proposed project is likely to develop new knowledge that will contribute to the purposes of the International Education Program authorized by Part A of Title VI of the HEA.

(d) *Formulation of problems and knowledge of related research.* (10) The Secretary reviews each application for information that shows that problems, questions, or hypotheses to be dealt with by the applicant—

(1) Are well formulated; and

(2) Reflect adequate knowledge of related research.

(e) *Specificity of statement of procedures.* (10) The Secretary reviews each application for the specificity and completeness of the statement of procedures to be followed, including a discussion of such components as sampling techniques, controls, data to be gathered, and statistical and other analyses to be undertaken.

(f) *Adequacy of methodology and scope of project.* (10) The Secretary reviews each application for information that shows—

(1) The adequacy of the proposed teaching, testing, and research methodology; and

(2) The size, scope, and duration of the proposed project.

(Authority: 20 U.S.C. 1125)

§ 660.33 What additional selection criteria does the Secretary use for an application to develop specialized instructional materials?

In addition to the criteria referred to in § 660.31, the Secretary applies the following criteria to an application for assistance to develop specialized instructional materials.

(a) *Need for the project.* (10) The Secretary reviews each application for information that shows that—

(1) The proposed materials are needed in the educational field of study on which the project focuses; and

(2) The language or languages, the area, region, or country, or the issues or studies for which the materials are to be developed, are of sufficient priority and significance to the national interest to warrant financial support by the Federal Government.

(b) *Potential for the use of materials in other programs.* (10) The Secretary reviews each application for information that shows the extent to which the proposed materials may be used elsewhere in the United States.

(c) *Account of related materials.* (10) The Secretary reviews each application for information that shows that—

(1) All existing related or similar materials have been accounted for and the critical commentary on their adequacy is appropriate and accurate; and

(2) The proposed materials will not duplicate any existing adequate materials.

(d) *Likelihood of achieving results.* (10) The Secretary reviews each application for information that shows that the outlined methods and procedures for preparing the materials are practicable and can be expected to produce the anticipated results.

(e) *Expected contribution to other programs.* (10) The Secretary reviews each application for information that shows the extent to which the proposed work may contribute significantly to strengthening, expanding, or improving programs of foreign language studies, area studies, or international studies in the United States.

(f) *Description of final form of materials.* (5) The Secretary reviews each application for information that shows a high degree of specificity in the description of the contents and final form of the proposed materials.

(g) *Provisions for pretesting and revision.* (5) The Secretary reviews each application for information that shows that adequate provision has been made for—

(1) Pretesting the proposed materials; and

(2) If necessary, revising the proposed materials before publication.

(Authority: 20 U.S.C. 1125)

§ 660.34 What priorities may the Secretary establish?

(a) The Secretary may each year select for funding from among the following priorities:

(1) Categories of eligible projects described in § 660.10.

(2) Specific languages or regions for study or materials development; for example, the Near or Middle East, South Asia, Southeast Asia, Eastern Europe, Inner Asia, the Far East, Africa or Latin America, or the languages of those regions.

(3) Topics of research and studies; for example, language acquisition processes, methodology of foreign language instruction, foreign language proficiency testing, or assessments of resources and needs.

(4) Levels of education; for example, elementary, secondary, postsecondary or university-level education, or teacher education.

(b) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1126)

§ 660.35 What additional factors does the Secretary consider in selecting grant recipients?

To the extent practicable and consistent with the criterion of excellence, the Secretary shall award grants in such manner as will achieve an equitable distribution of funds throughout the Nation.

(Authority: 20 U.S.C. 1126; House Rept. 1337, 96 Cong. 2d Sess. p. 189)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 660.40 What are the limitations on allowable costs?

Funds awarded under this part may not be used for the training of students and teachers.

(Authority: 20 U.S.C. 1125)

PART 661—BUSINESS AND INTERNATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.

661.1 What is the Business and International Education Program?
661.2 Who is eligible to apply for a grant under the Business and International Education Program?
661.3 What regulations apply to the Business and International Education Program?
661.4 What definitions apply to the Business and International Education Program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under this Program?

661.10 What activities does the Secretary assist under this program?

Subpart C—How Does One Apply for a Grant?

661.20 What must an application include?

Subpart D—How Does the Secretary Make a Grant?

661.30 How does the Secretary evaluate an application?
661.31 What selection criteria does the Secretary use?
661.32 What priorities may the Secretary establish?

Subpart E—What Conditions Must be Met by a Grantee?

661.40 What are the matching requirements?

AUTHORITY: 20 U.S.C. 1130-1130b, unless otherwise noted.

SOURCE: 49 FR 24362, June 12, 1984, unless otherwise noted.

Subpart A—General

§ 661.1 What is the Business and International Education Program?

The Business and International Education Program is designed to promote linkages between institutions of higher education and American businesses engaged in international economic activities. The purpose of each project assisted under this part is both to enhance the international academic programs of institutions of higher education, and to provide appropriate services to the business community that will enable it to expand its capacity to sell its goods and services outside the United States.

(Authority: 20 U.S.C. 1130)

§ 661.2 Who is eligible to apply for a grant under the Business and International Education Program?

Under this program the Secretary considers applications from institutions of higher education that have entered into agreements with business enterprises, trade organizations or associations engaged in international economic activity—or a combination or consortium of these enterprises, organizations or associations—for the purposes of pursuing the activities authorized under this program.

(Authority: 20 U.S.C. 1130a)

§ 661.3 What regulations apply to the Business and International Education Program?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 655.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78 and 79.

(c) The regulations in this Part 661.

(Authority: 20 U.S.C. 1130-1130a)

§ 661.4 What definitions apply to the Business and International Education Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Contract
EDGAR
Equipment
Facilities
Fiscal Year
Grant
Grantee
Nonprofit
Profit
Private
Public
Secretary
Supplies

(b) *Definitions in 34 CFR Part 655.* The following terms used in this part are defined in 34 CFR Part 655.4(b):

Combinations of institutions
Institution of higher education

(Authority: 20 U.S.C. 1130-1130a)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 661.10 What activities does the Secretary assist under this program?

The activities that the Secretary may assist institutions of higher education to conduct under this program, include but are not limited to—

(a) Innovation and improvement of international education curricula to serve the needs of the business community, including the development of new programs for nontraditional, mid-career, or part-time students;

(b) Development of programs to inform the public of increasing international economic interdependence and the role of American business within the international economic system;

(c) Internationalization of curricula at junior and community colleges, and at undergraduate and graduate schools of business;

(d) Development of area studies programs and interdisciplinary international programs;

(e) Establishment of export education programs through cooperative arrangements with regional and world trade centers and councils, and with bilateral and multilateral trade associations;

(f) Research for and development of teaching materials relating to international education, including language materials, and facilities appropriate to business-oriented students;

(g) Establishment of student and faculty fellowships and internships for training and education in international business activities;

(h) Development of opportunities for business and other professional school junior faculty to acquire or strengthen international skills and perspectives;

(i) Development of research programs on issues of common interest to institutions of higher education and private sector organizations and associations engaged in or promoting international economic activity; and

(j) The establishment of internships overseas to enable foreign language students to develop their foreign language skills and their knowledge of foreign cultures and societies.

(Authority: 20 U.S.C. 1130-1130b)

[49 FR 24362, June 12, 1984, as amended at 52 FR 28426, July 29, 1987]

Subpart C—How Does One Apply for a Grant

§ 661.20 What must an application include?

An institution that applies for a grant under this program shall include the following in its application:

(a)(1) A copy of the agreement between the applicant and the other party or parties described in § 661.2 for the purpose of carrying out the activities for which the applicant seeks assistance.

(2) The agreement must be signed by all parties and it must describe the manner in which the business enterprise, trade association, or organization will assist in carrying out the activities proposed in the application.

(b) An assurance that the applicant will use the funds to supplement and not to supplant activities conducted by the applicant.

(Authority: 20 U.S.C. 1130a)

Subpart D—How Does the Secretary Make a Grant?

§ 661.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant under this program on the basis of the criteria in § 661.31.

(b) The Secretary awards up to 100 possible points for these criteria. The maximum possible points for each criterion are shown in parentheses.

(Authority: 20 U.S.C. 1130a)

§ 661.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate applications for a grant under this program.

(a) *Plan of operation.* (Maximum 30 points) (See 34 CFR 655.31(a).)

(b) *Qualifications of the key personnel.* (Maximum 10 points) (See 34 CFR 655.31(b).)

(c) *Budget and cost effectiveness.* (Maximum 15 points) (See 34 CFR 655.31(c).)

(d) *Evaluation plan.* (Maximum 15 points) (See 34 CFR 655.31(d).)

(e) *Adequacy of resources* (Maximum 10 points) (See 34 CFR 655.31(e).)

(f) *Need for the project.* (Maximum 20 points)

The Secretary reviews each application for information that shows the need for the project, and the extent to which the proposed project will promote linkages between institutions of higher education and the business community involved in international economic activities.

(Authority: 20 U.S.C. 1130a)

§ 661.32 What priorities may the Secretary establish?

(a) The Secretary may each year establish priorities for funding from the activities described in § 661.10.

(b) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1130a)

Subpart E—What Conditions Must be Met by a Grantee?

§ 661.40 What are the matching requirements?

A grantee shall pay a minimum of 50 percent of the cost of the project for each fiscal year.

(Authority: 20 U.S.C. 1130a)

PART 662—HIGHER EDUCATION PROGRAMS IN MODERN FOREIGN LANGUAGE TRAINING AND AREA STUDIES—DOCTORAL DISSERTATION RESEARCH ABROAD FELLOWSHIP PROGRAM

Subpart A—General

Sec.

662.1 What is the Doctoral Dissertation Research Abroad Program?
662.2 Who is eligible to apply for grants under this program?
662.3 Who is eligible to receive a fellowship under this program?
662.4 What regulations apply to the Doctoral Dissertation Research Abroad Program?
662.5 What definitions apply to the Doctoral Dissertation Research Abroad Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program? [Reserved]

Subpart C—How Does an Institution and an Individual Apply for a Grant or Fellowship?

662.20 What is the role of the institution in the application process?
662.21 How does an individual apply for a fellowship?

Subpart D—How Does the Secretary Select Fellows?

662.30 How does the Secretary select individual applicants for recommendation to the Board of Foreign Scholarships for selection for Doctoral Dissertation Research Abroad Fellowships?
662.31 How does the Secretary evaluate an individual student application under the Doctoral Dissertation Research Abroad Program?
662.32 What criteria does the Secretary use in recommending individuals for Doctoral Dissertation Research Abroad Fellowships?

Sec.
662.33 How does the Board of Foreign Scholarships select fellows?

Subpart E—What Conditions Must be Met by an Institution?

662.40 What are an institution's responsibilities regarding the administration of the grant?
662.41 How is the amount of a fellowship determined?
662.42 What are the disbursement procedures?

Subpart F—What Conditions Must be Met by an Individual?

662.50 What is the duration of a fellowship?
662.51 What academic conditions must be met?
662.52 What standards of conduct must be adhered to abroad?
662.53 Can a fellowship be revoked or terminated?

AUTHORITY: Sec. 102(b)(6), of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), unless otherwise noted.

SOURCE: 48 FR 56812, Dec. 19, 1983, unless otherwise noted.

Subpart A—General

§ 662.1 What is the Doctoral Dissertation Research Abroad Program?

(a) The Doctoral Dissertation Research Abroad Program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States by providing opportunities for scholars to conduct research abroad.

(b) Under the program, the Secretary awards fellowships, through institutions of higher education, to Ph. D. candidates who are proposing to conduct dissertation research abroad in modern foreign languages and area studies.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.2 Who is eligible to apply for grants under this program?

Institutions of higher education are eligible to apply for a grant under this program.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 662.3 Who is eligible to receive a fellowship under this program?

An individual is eligible to receive a fellowship if the individual—

(a)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a resident of the Trust Territory of the Pacific Islands;

(b) Is a graduate student in good standing at an institution of higher education who, when the fellowship period begins, is admitted to candidacy in a doctoral degree program in modern foreign languages and area studies at that institution;

(c) Is planning a teaching career in the United States upon graduation; and

(d) Possesses adequate skills in the language(s) necessary to carry out the dissertation research project.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 662.4 What regulations apply to the Doctoral Dissertation Research Abroad Program?

The following regulations apply to this program:

(a) The regulations in this Part 662; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.5 What definitions apply to the Doctoral Dissertation Research Abroad Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
EDGAR
Fiscal Year
Grant
Grant period

Nonprofit
Project
Project period
Private
Public
Secretary
State

(Authority: 22 U.S.C. 2452(b)(6))

(b) *Definitions that apply to this program:* The following definitions apply to the Doctoral Dissertation Research Abroad Program:

Area studies means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

Binational commission means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

Board of Foreign Scholarships means the presidentially appointed board which is responsible for supervision of the program covered by this part.

Dependent means any of the following individuals who accompany the program participant to his or her research or training site if the individual will receive more than 50 percent of his or her support from the participant during the fellowship period:

(1) The participant's spouse;

(2) The participant's or spouse's children who are unmarried and under 21;

(3) The participant's or spouse's mother or father if the mother or father is incapable of self-support.

Foreign currencies means those currencies of foreign countries which currencies are owned by the United States.

Institution of higher education means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a recognized accrediting agency or association.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program? [Reserved]

Subpart C—How Does an Institution and an Individual Apply for a Grant or Fellowship?

§ 662.20 What is the role of the institution in the application process?

An eligible institution is responsible for—

(a) Distributing individual application packets to students;

(b) Accepting and screening individual applications in accordance with its own technical and academic criteria; and

(c) Forwarding individual applications to the Secretary through a request for an institutional grant.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 662.21 How does an individual apply for a fellowship?

(a) An applicant for a fellowship obtains an application from the institution of higher education at which the individual is enrolled in a doctoral program and submits the completed application through that institution to the Secretary.

(b) The applicant shall provide sufficient information concerning his personal and academic background, and proposed research project, to enable the Secretary to determine whether the individual—

(1) Is eligible to receive a fellowship under § 662.3; and

(2) Should be selected for a fellowship under Subpart D of this part.

(c) If an applicant plans to conduct research in the U.S.S.R., Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania, or Yugoslavia, he or she must simultaneously submit an application to the International Research and Exchanges Board (IREX) in accordance with the procedures of that Board.

(Authority: 22 U.S.C. 2452(b)(6))

Subpart D—How Does the Secretary Select Fellows?

§ 662.30 How does the Secretary select individual applicants for recommendation to the Board of Foreign Scholarships for selection for Doctoral Dissertation Research Abroad Fellowships?

(a) The Secretary makes a preliminary selection of individuals for Doctoral Dissertation Research Abroad Fellows with the advice of—

(1) Panels of U.S. academic specialists in modern foreign languages and area studies; and

(2) Binational commissions and/or U.S. diplomatic missions in the proposed country(ies) of research.

(b) All selections by the Secretary are subject to review and final approval by the Board of Foreign Scholarships.

(c) The Secretary does not recommend an individual to the Board of Foreign Scholarships if the individual proposes to carry out research in a country with which the United States has no diplomatic relations.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

§ 662.31 How does the Secretary evaluate an individual student application under the Doctoral Dissertation Research Abroad Program?

(a) The Secretary evaluates an application for a Doctoral Dissertation Research Abroad Fellowship based on the criteria in § 662.32 and any pertinent information provided by binational commissions or U.S. diplomatic missions abroad or both.

(b) In general, the Secretary awards up to 90 possible points. However, if priority criteria are used, the Secretary awards up to 100 possible points. The maximum possible points for each criterion are shown in parentheses.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.32 What criteria does the Secretary use in recommending individuals for Doctoral Dissertation Research Abroad Fellowships?

The Secretary uses the criteria in this section and pertinent information provided by U.S. diplomatic missions abroad and binational commissions to evaluate an application of a graduate student for the purpose of recommending to the Board of Foreign Scholarships candidates for fellowships under this part. The Secretary gives preference to American citizens who have served in the armed services of the United States. The criteria are weighted and may total 100 points.

(a) *Quality of proposed project.* (Maximum 45 points)

(1) The Secretary reviews each application for information that shows the quality of the research project proposed by the student.

(2) The Secretary looks for information that shows the extent to which—

(i) The project is original; the problems, questions, hypotheses are well formulated;

(ii) The project is well formulated and demonstrates adequate knowledge of related research;

(iii) The methodology is specifically described, sound, and appropriate to the project;

(iv) The applicant demonstrates knowledge and utilization of resources pertinent to the project in the United States;

(v) The project's location in the proposed foreign country(ies) is necessary for the successful completion of the project;

(vi) The applicant has made preparations to establish research contacts and affiliations abroad, and the overseas facilities indicated will afford sufficient and appropriate locations for the proposed research;

(vii) The application reflects the intent to share with scholars and officials of the host country the results of the research in progress and a copy of the dissertation;

(viii) The application reflects guidance and supervision on the part of the dissertation advisor or committee throughout all stages, including the development of the project, understanding of research conditions abroad, and actual research in the field; and

(ix) The project can be completed within the proposed fellowship period.

(b) *Qualifications of the applicant.* (Maximum 45 points)

(1) The Secretary reviews each application for information that shows the qualifications of the applicant.

(2) The Secretary looks for information that shows the extent to which—

(i) The applicant's academic record is excellent and relevant to the proposed project;

(ii) The applicant possesses adequate foreign language skills to carry out the proposed project; and

(iii) The applicant has the ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience.

(c) *Priorities.* (Maximum 10 points)

(1) The Secretary may establish priorities each year for the selection of fellows. These priorities relate to: certain world areas, countries, academic disciplines, languages, or combinations of any of these categories. For example, the Secretary may establish a priority for: a specific world area or country such as the Caribbean or Poland, an academic discipline such as economics or political science, or certain languages such as Tajiki or Serbo-Croatian.

(2) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

§ 662.33 How does the Board of Foreign Scholarships select fellows?

(a)(1) The Board of Foreign Scholarships selects Doctoral Dissertation Research Abroad Fellows on the basis of the preliminary selections by the Secretary and pertinent information supplied by U.S. diplomatic missions and binational commissions.

(2) The Board of Foreign Scholarships does not select fellows to carry out research in the U.S.S.R. unless the applicant has been approved for that purpose by the International Research and Exchanges Board (IREX).

(b) Pertinent information used by the Board of Foreign Scholarships and the Secretary in the selection process, which is provided by U.S. diplomatic missions and/or binational commissions may include, but is not necessarily limited to, information concerning the feasibility of the project, and the political sensitivity of the host country.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(1))

Subpart E—What Conditions Must Be Met by an Institution?

§ 662.40 What are an institution's responsibilities regarding the administration of the grant?

(a) An institution to which the Secretary awards a grant under this part is responsible for administering the grant subject to the provisions of § 662.4.

(b) The institution is responsible for processing individual applications in accordance with procedures described in § 662.20.

(c) The institution is responsible for disbursing funds in accordance with procedures described in § 662.42.

(d) The Secretary awards the institution an administrative allowance of $100 for each fellowship listed in the grant agreement.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 662.41 How is the amount of a fellowship determined?

(a) In accordance with sections 104 (b)(1) and (e)(2) of the Mutual Educational and Cultural Exchange Act of 1961, the Secretary pays—

(1) Travel expenses, including excess baggage to and from the residence of the fellow to the host country of research;

(2) A maintenance allowance for the fellow and his or her dependents;

(3) An allowance for research-related expenses overseas such as books, copying, tuition and affiliation fees, local travel, and other incidental expenses; and

(4) Health and accident insurance premiums.

(b) The Secretary may pay for—

(1) Emergency medical expenses not covered by health and accident insurance; and

(2) The costs of preparing and transporting to his or her former home, participants or dependents who die during the term of the fellowship.

(c) In the application notice published annually in the FEDERAL REGISTER, the Secretary announces the amount of benefits expected to be available.

(Authority: 22 U.S.C. 2452(b)(6), and 2454(e)(1) and (2))

§ 662.42 What are the disbursement procedures?

The grantee institution is responsible for disbursing funds for allowances authorized by the grant except that the appropriate U.S. diplomatic mission disburses directly to the fellow allowances paid in foreign currencies.

(Authority: 22 U.S.C. 2452(b)(6))

Subpart F—What Conditions Must be Met by an Individual?

§ 662.50 What is the duration of a fellowship?

(a) A fellowship is for a period of not fewer than six nor more than twelve months.

(b) The fellowship may not be renewed.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.51 What academic conditions must be met?

A fellow shall—

(a) Maintain satisfactory progress in the conduct of his or her research;

(b) Devote full time to research on the approved topic;

(c) Not engage in gainful employment during the period of the fellowship; and

(d) Remain a student in good standing with the grantee institution during the entire period of the fellowship.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.52 What standards of conduct must be adhered to abroad?

The Secretary furnishes to each fellow a copy of the Board of Foreign Scholarships statement of the rights and obligations of American grantees and participants abroad. Fellows must adhere to the standards in the statement, and comply with the legal and moral standards of the host country(ies). Failure to do so may result in the revocation or termination of the fellowship by the Board of Foreign Scholarships.

(Authority: 22 U.S.C. 2452(b)(6), 2456, Policy Statements of the Board of Foreign Scholarships, 1972)

§ 662.53 Can a fellowship be revoked or terminated?

(a) The Board of Foreign Scholarships, upon the recommendation of the Secretary, may revoke or terminate a fellowship because of—

(1) A fellow's failure to maintain eligibility; or

(2) Misconduct by the fellow.

(b) As used in this section misconduct includes, but is not limited to—

(1) A violation of the laws of the United States or the host country; or

(2) An act that gives offense to the host country.

(Authority: 22 U.S.C. 2452(b)(6), 2456, Policy Statements of the Board of Foreign Scholarships, 1972)

PART 663—HIGHER EDUCATION PROGRAMS IN MODERN FOREIGN LANGUAGE TRAINING AND AREA STUDIES—FACULTY RESEARCH ABROAD FELLOWSHIP PROGRAM

Subpart A—General

Sec.
663.1 What is the Faculty Research Abroad Program?
663.2 Who is eligible to apply for grants under this program?
663.3 Who is eligible to receive a fellowship under this program?
663.4 What regulations apply to this program?
663.5 What definitions apply to the Faculty Research Abroad Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program? [Reserved]

Subpart C—How does an Institution and an Individual Apply for a Grant or Fellowship?

663.20 What is the role of the institution in the application process?

Sec.
663.21 How does an individual apply for a fellowship?

Subpart D—How Does the Secretary Select Fellows?

663.30 How does the Secretary select individual applicants for recommendation to the Board of Foreign Scholarships for selection for Faculty Research Abroad Fellowships?
663.31 How does the Secretary evaluate an individual application under the Faculty Research Abroad Program?
663.32 What criteria does the Secretary use in recommending individuals for Faculty Research Abroad Fellowships?
663.33 How does the Board of Foreign Scholarships select fellows?

Subpart E—What Conditions Must Be Met by an Institution?

663.40 What are an institution's responsibilities regarding the administration of the grant?
663.41 How is the amount of the fellowship determined?
663.42 What are the disbursement procedures?

Subpart F—What Conditions Must Be Met by an Individual?

663.50 What is the duration of the fellowship?
663.51 What academic conditions must be met?
663.52 What standards of conduct must be adhered to abroad?
663.53 Can a fellowship be revoked or terminated?

AUTHORITY: Sec. 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

SOURCE: 48 FR 56185, Dec. 19, 1983, unless otherwise noted.

Subpart A—General

§ 663.1 What is the Faculty Research Abroad Program?

(a) The Faculty Research Abroad Program is designed to contribute to the development and improvement of modern foreign language training and area studies in the United States by providing opportunities for scholars to conduct research abroad.

(b) Under the program, the Secretary awards fellowships, through institutions of higher education, to faculty members of the institutions who are proposing to conduct research abroad in modern foreign languages and area studies to improve their skill in languages and their knowledge of the culture of the people of these countries.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.2 Who is eligible to apply for grants under this program?

Institutions of higher education are eligible to apply for grants under this program.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 663.3 Who is eligible to receive a fellowship under his program?

An individual is eligible to receive a fellowship if the individual—

(a)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a resident of the Trust Territory of the Pacific Islands;

(b) Is employed by an institution of higher education;

(c) Has been engaged in teaching relevant to his or her foreign language or area studies specialization for the two years immediately preceding the date of the award;

(d) Proposes research relevant to his or her modern foreign language or area studies specialization which—

(1) Cannot be conducted in the United States, or for which a foreign country or region provides significantly superior research facilities;

(2) Will contribute to the development or improvement of the study of modern foreign languages or area studies in those fields needed for full understanding of the area, regions, or countries in which the modern foreign languages are commonly used; and

(3) Is not dissertation research for a Ph. D; and

(e) Possesses adequate skills in the language or languages necessary to successfully carry out the project.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 663.4 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this Part 663; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.5 What definitions apply to the Faculty Research Abroad Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
EDGAR
Fiscal Year
Grant
Grant period
Project
Project period
Private
Public
Secretary
State

(Authority: 22 U.S.C. 2452(b)(6))

(b) *Definitions that apply to this program:* The following definitions apply to the Faculty Research Abroad Program:

Area studies means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

Binational commission means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

Board of Foreign Scholarships means the Presidentially appointed board which is responsible for supervision of the program covered by this part.

Dependent means any of the following individuals who accompany the program participant to his or her training site if the individual will receive more than 50 percent of his or her support from the participant during the fellowship period:

(1) The participant's spouse;

(2) The participant's or spouse's children who are unmarried and under 21;

(3) The participant's or spouse's mother or father if the mother or father is incapable of self-support.

Foreign currencies means those currencies of foreign countries which currencies are owned by the United States.

Institution of higher education means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program? [Reserved]

Subpart C—How Does an Institution and an Individual Apply for a Grant or Fellowship?

§ 663.20 What is the role of the institution in the application process?

An eligible institution is responsible for—

(a) Distributing individual application packets to faculty interested in applying for fellowships;

(b) Accepting and screening individual applications in accordance with its own technical and academic criteria; and

(c) Forwarding individual applications to the Secretary through a request for an institutional grant.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 663.21 How does an individual apply for a fellowship?

(a) An applicant for a fellowship obtains an application from the institution of higher education at which he or she is employed and submits his or her application to the Secretary through that institution.

(b) The applicant shall provide sufficient information concerning his or her personal and academic background and proposed research project to enable the Secretary to determine whether the individual—

(1) Is eligible to receive a fellowship; and

(2) Should be selected for a fellowship under Subpart D of this part.

(c) If an applicant plans to conduct research in the U.S.S.R., Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania, or Yugoslavia, he or she must simultaneously submit an application to the International Research and Exchanges Board (IREX) in accordance with the procedures of that Board.

(Authority: 22 U.S.C. 2452(b)(6))

Subpart D—How Does the Secretary Select Fellows?

§ 663.30 How does the Secretary select individual applicants for recommendation to the Board of Foreign Scholarships for selection for Faculty Research Abroad Fellowships?

(a) The Secretary makes a preliminary selection of individuals for Faculty Research Abroad Fellows with the advice of—

(1) Panels of U.S. academic specialists in modern foreign languages and area studies; and

(2) Binational commissions or U.S. diplomatic missions in the proposed country(ies) of research.

(b) All selections by the Secretary are subject to a review and final approval by the Board of Foreign Scholarships.

(c) The Secretary does not recommend an individual to the Board of Foreign Scholarhsips if the individual proposes to carry out research in a country with which the United States has no diplomatic relations.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

§ 663.31 How does the Secretary evaluate an individual application under the Faculty Research Abroad Program?

(a) The Secretary evaluates an application for a Faculty Research Abroad Fellowship based on the criteria in § 663.32 and any pertinent information provided by binational commissions and/or U.S. diplomatic missions.

(b) In general, the Secretary awards up to 90 possible points. However, if priority criteria are used, the Secretary awards up to 100 possible points. The maximum possible points for each criterion are shown in parentheses.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.32 What criteria does the Secretary use in recommending individuals for Faculty Research Abroad Fellowships?

The Secretary uses the criteria in this section to evaluate applications of faculty for the purpose of recommending to the Board of Foreign Scholarships candidates for fellowships under this part. The Secretary gives preference to American citizens who have served in the armed services of the United States. The criteria are weighted and may total 100 points.

(a) *Quality of proposed project.* (Maximum 45 points)

(1) The Secretary reviews each application for information that shows the quality of the research project proposed by the faculty member.

(2) The Secretary looks for information that shows the extent to which—

(i) The project is well formulated and demonstrates adequate knowledge of related research;

(ii) The methodology is specifically described, sound, and appropriate to the project;

(iii) The objectives of the project are relevant to the sponsoring institution's plans for developing and/or strengthening programs in modern foreign languages and area studies;

(iv) The applicant demonstrates knowledge and utilization of resources pertinent to the project in the United States;

(v) The project's location in the proposed foreign country(ies) is necessary for the successful completion of the project;

(vi) The applicant has made preparations to establish research contacts and affiliations abroad;

(vii) The application reflects the intent to share the results of the research with scholars and officials of the host country and of the American scholarly community;

(viii) The overseas facilities indicated will afford sufficient and appropriate locations for the proposed research; and

(ix) The project can be completed within the proposed fellowship period.

(b) *Qualifications of the applicant.* (Maximum 45 points)

(1) The Secretary reviews each application for information that shows the qualifications of the applicant.

(2) The Secretary looks for information that shows the extent to which—

(i) The applicant's academic record is excellent and relevant to the proposed project;

(ii) The applicant possesses adequate foreign language skills to carry out the proposed project; and

(iii) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience.

(c) *Priorities.* (Maximum 10 points)

(1) The Secretary may establish priorities each year for the selection of fellows. These priorities relate to: certain world areas, countries, academic disciplines, languages, or combinations of any of these categories. For example, the Secretary may establish a priority for a specific world area or country such as East Asia or the U.S.S.R., for an academic discipline such as history or political science, or for languages such as Hausa or Telegu.

(2) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

§ 663.33 How does the Board of Foreign Scholarships select fellows?

(a)(1) The Board of Foreign Scholarships selects Faculty Research Abroad Fellows on the basis of the preliminary selections of the Secretary and pertinent information supplied by U.S. diplomatic missions and binational commissions.

(2) The Board of Foreign Scholarships does not select fellows to carry out research in the U.S.S.R. unless the applicant has been approved for that purpose by the International Research and Exchanges Board (IREX).

(b) Pertinent information used by the Board of Foreign Scholarships and the Secretary in the selection process, which is provided by U.S. diplomatic missions and binational commissions, may include, but is not necessarily limited to, information concerning the feasibility of the project and the political sensitivity of the host country.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(1))

Subpart E—What Conditions Must be Met by an Institution?

§ 663.40 What are an institution's responsibilities regarding the administration of the grant?

(a) An institution to which the Secretary awards a grant under this part is responsible for administering the grant subject to the provisions of § 663.4

(b) The institution is responsible for processing individual applications in accordance with procedures described in § 663.20.

(c) The institution is responsible for disbursing funds in accordance with procedures described in § 663.42.

(d) The Secretary awards the institution an administrative allowance of $100 for each fellowship listed in the grant agreement.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 663.41 How is the amount of the fellowship determined?

(a) In accordance with sections 104 (b)(1) and (e)(2) of the Mutual Educational and Cultural Exchange Act of 1961, the Secretary pays—

(1) Travel expenses, including excess baggage to and from the residence of the fellow to the host country of research;

(2) A maintenance allowance for the fellow; and

(3) An allowance for research related expenses overseas such as books, copying, tuition and affiliation fees, local travel, and other incidental expenses.

(b) The Secretary may pay for—

(1) Emergency medical expenses not covered by the faculty member's health and accident insurance; and

(2) The costs of preparing and transporting to his or her former home, participants or dependents who die during the term of the fellowship.

(c) In the application notice published annually in the FEDERAL REGISTER, the Secretary announces the amount of benefits expected to be available.

(Authority: 22 U.S.C. 2452(b)(6), and 2454(e) (1) and (2))

§ 663.42 What are the disbursement procedures?

(a) A grantee institution is responsible for disbursing funds for allowances authorized by the grant.

(b) In cases where grants are made in foreign currencies, the appropriate U.S. diplomatic mission disburses directly to the fellow allowances paid in foreign currencies.

(Authority: 22 U.S.C. 2452(b)(6))

Subpart F—What Conditions Must be Met by an Individual?

§ 663.50 What is the duration of the fellowship?

(a) A fellowship is for a period of not fewer than three nor more than twelve months.

(b) The fellowship may not be renewed.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.51 What academic conditions must be met?

A fellow shall—

(a) Maintain satisfactory progress in the conduct of his or her research;

(b) Devote full time to research on the approved topic;

(c) Not engage in gainful employment overseas during the period of the fellowship; and

(d) Remain employed by the grantee institution during the entire period of the fellowship.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.52 What standards of conduct must be adhered to abroad?

The Secretary furnishes to all fellows a copy of the Board of Foreign Scholarships Statement on the rights and obligations of American grantees and participants abroad. Fellows must adhere to the standards in the statement and comply with the legal and moral standards of the host country(ies). Failure to do so may result in the revocation or termination of the fellowship by the Board of Foreign Scholarships.

(Authority: 22 U.S.C. 2452(b)(6), 2456, Policy Statements of the Board of Foreign Scholarships, 1972)

§ 663.53 Can a fellowship be revoked or terminated?

(a) The Board of Foreign Scholarships, upon the recommendation of the Secretary, may revoke or terminate a fellowship because of—

(1) A fellow's failure to maintain eligibility; or

(2) Misconduct by the fellow.

(b) As used in this section misconduct includes, but is not limited to—

(1) A violation of the laws of the United States or the host country; or

(2) An Act that gives offense to the host country.

(Authority: 22 U.S.C. 2452(b)(6), 2456, Policy Statements of the Board of Foreign Scholarships, 1972)

PART 664—HIGHER EDUCATION PROGRAMS IN MODERN FOREIGN LANGUAGE TRAINING AND AREA STUDIES—GROUP PROJECTS ABROAD PROGRAM

Subpart A—General

Sec.
664.1 What is the Group Projects Abroad Program?

Sec.
664.2 Who is eligible to apply for assistance under the Group Projects Abroad Program?
664.3 Who is eligible to participate in projects funded under the Group Projects Abroad Program?
664.4 What regulations apply to the Group Projects Abroad Program?
664.5 What definitions apply to the Group Projects Abroad Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

664.10 What kinds of projects does the Secretary assist?
664.11 What is a short-term seminar project?
664.12 What is a curriculum development project?
664.13 What is a group research or study project?
664.14 What is an advanced overseas intensive language training project?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

664.30 How does the Secretary evaluate an application?
664.31 What selection criteria does the Secretary use?
664.32 What priorities may the Secretary establish?
664.33 What costs does the Secretary pay?

Subpart E—What Conditions Must Be Met by a Grantee?

664.40 What standards of conduct must be adhered to abroad?

AUTHORITY: Sec. 102 (b) (6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), (22 U.S.C. 2452(b)(6)), unless otherwise noted.

SOURCE: 48 FR 56188, Dec. 19, 1983, unless otherwise noted.

Subpart A—General

§ 664.1 What is the Group Projects Abroad Program?

(a) The Group Projects Abroad Program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States by providing opportunities for teachers, students, and faculty to study in foreign countries.

(b) Under the program, the Secretary awards grants to eligible institutions, departments, and organizations to conduct overseas group projects in research, training, and curriculum development.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.2 Who is eligible to apply for assistance under the Group Projects Abroad Program?

The following are eligible to apply for assistance under this part:

(a) Institutions of higher education;

(b) State departments of education;

(c) Private non-profit educational organizations; and

(d) A consortium of institutions, departments, and organizations described in paragraphs (a), (b), or (c) of this section.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.2 Who is eligible to participate in projects funded under the Group Projects Abroad Program?

An individual is eligible to participate in a Group Projects Abroad, if the individual—

(a)(1) Is a citizen or national of the United States,

(2) Is a permanent resident of the United States,

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a resident of the Trust Territory of the Pacific Islands; and

(b)(1) Is a faculty member who teaches modern foreign languages or area studies in an institution of higher education;

(2) Is a teacher in an elementary or secondary school;

(3) Is an experienced education administrator responsible for planning, conducting, or supervising programs in modern foreign languages or area studies at the elementary, secondary, or postsecondary level; or

(4) Is a graduate student, or a junior or senior in an institution of higher education, who plans a teaching career

in modern foreign languages or area studies.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.4 What regulations apply to the Group Projects Abroad Program?

The following regulations apply to this program:

(a) The regulations in this Part 664; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1), 2456(a)(2))

§ 664.5 What definitions apply to the Group Projects Abroad Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
EDGAR
Equipment
Facilities
Fiscal Year
Grant
Grantee
Grant Period
Nonprofit
Project
Project Period
Private
Public
Secretary
State
State educational agency
Supplies

(Authority: 22 U.S.C. 2452(b)(6))

(b) *Definitions that apply to this program:* The following definitions apply to the Group Projects Abroad Program:

Area studies means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

Binational commission means an educational and cultural commission established, through an agreement between the Untied States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

Board of Foreign Scholarship means the Presidentially appointed board which is responsible for supervision of the program covered by this part.

Institution of higher education means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 664.10 What kinds of projects does the Secretary assist?

The Secretary assists projects which are designed to develop or improve programs in modern foreign language or area studies at the elementary, secondary, or postsecondary level by supporting overseas projects in research, training, and curriculum development by groups of individuals engaged in a common endeavor. Projects may include, as described in §§ 664.11 through 664.14, short-term seminars, curriculum development teams, group research or study, and advanced intensive language programs.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.11 What is a short-term seminar project?

A short-term seminar project is—

(a) Designed to help integrate international studies into an institution's or school system's general curriculum.

(b) Normally six weeks in length and focuses on a particular aspect of area study, such as, for example, the culture of the area or a portion of the culture.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.12 What is a curriculum development project?

(a) A curriculum development project—

(1) Is designed to permit faculty and administrators in institutions of higher education and elementary and secondary schools, and administrators in State Departments of Education the opportunity to spend generally from six to eight weeks in a foreign country acquiring resource materials for curriculum development in modern foreign language and area studies.

(2) Shall provide for the systematic use and dissemination in the United States of the acquired materials.

(b) For the purpose of this section, resource materials include artifacts, books, documents, educational films, museum reproductions, recordings and other instructional material.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.13 What is a group research or study project?

(a)(1) A group research or study project is designed to permit a group of faculty of an institution of higher education and graduate and undergraduate students to undertake research or study in a foreign country.

(2) The period of research or study in a foreign country is generally from two to twelve months.

(b) As a prerequisite to participating in a research or training project, participants—

(1) Shall possess the requisite language proficiency to conduct the research or study, and disciplinary competence in their area of research; and

(2) In a project of a semester or longer, shall have completed, at a minimum, one semester of intensive language training and one course in area studies relevant to the projects.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.14 What is an advanced overseas intensive language training project?

(a)(1) An advanced overseas intensive language project is designed to take advantage of the opportunities present in the foreign country that are not present in the United States when providing intensive advanced foreign language training.

(2) Projects may range from two to twelve months and include year projects, academic year projects, semester, trimester, or quarter projects, or summer projects.

(3) Language training shall be given at the advanced level, i.e., at the level equivalent to that provided to students who have successfully completed two academic years of language training.

(4) The language to be studied shall be indigenous to the host country and maximum use shall be made of local institutions and personnel.

(b) Participants in projects under this program shall have successfully completed at least two academic years of language study.

(Authority: 22 U.S.C. 2452(b)(6))

Subpart C—[Reserved]

Supart D—How Does the Secretary Make a Grant?

§ 664.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a Group Project Abroad under the criteria in § 664.31.

(b) In general, the Secretary awards up to 90 possible points for these criteria. However, if priority criteria are used, the Secretary awards up to 105 possible points. The maximum possible points for each criterion are shown in parentheses.

(c) All selections by the Secretary are subject to review and final approval by the Board of Foreign Scholarships.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

§ 664.31 What selection criteria does the Secretary use?

The Secretary uses the criteria in this section to evaluate applications for the purpose of recommending to the Board of Foreign Scholarships projects for funding under this part. The criteria are weighted and may total 105 points:

(a) *Plan of operation.* (Maximum 25 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to acheive each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (Maximum 20 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objections of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 10 points).

(1) The Secretary reviews each applications for information that shows the quality of the evaluation plans for the project.

(2) The Secretary looks for information that shows that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows that the facilities, equipment, and/or supplies that the applicant plans to use are adequate.

(f) *Specific program criteria.* (Maximum 20 points).

(1) In addition to the general selection criteria contained in this section, the Secretary reviews each application for information that shows that the project meets the specific program criteria.

(2) The Secretary looks for information that shows—

(i) The potential impact of the project on the development of the study of modern foreign languages and area studies in American education. (Maximum 5 points).

(ii) The project's relevance to the applicant's educational goals and its relationship to its program development in modern foreign languages and area studies. (Maximum 5 points).

(iii) The extent to which direct experience abroad is necessary to achieve the project's objectives and the effectiveness with which relevant host country resources will be utilized. (Maximum 10 points).

(g) *Priorities.* (Maximum 15 points). The Secretary looks for information that shows the extent to which the project addresses program priorities in the field of modern foreign languages and area studies for that year.

(Authority: 22 U.S.C. 2452(b)(6); 2456(a)(2))

§ 664.32 What priorities may the Secretary establish?

(a) The Secretary may establish for each funding competition one or more of the following priorities:

(1) Categories of projects described in § 664.10.

(2) Specific languages, countries or geographic regions of the world; for example, Chinese and Arabic, Brazil and Nigeria, Middle East and South Asia.

(3) Levels of education; for example, elementary and secondary, postsecondary or postgraduate.

(b) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

§ 664.33 What costs does the Secretary pay?

(a) The Secretary pays only part of the cost of a project funded under this part. Other than travel costs, the Secretary does not pay any of the costs for project-related expenses within the United States.

(b) The Secretary pays the cost of the following—

(1) A maintenance stipend based on 50 percent of the amount established in the U.S. Department of State publication "Maximum Travel Per Diem Allowances For Foreign Areas;"

(2) Round-trip international travel;

(3) A local travel allowance for necessary project-related transportation within the country of study, exclusive of the purchase of transportation equipment;

(4) Purchase of project-related artifacts, books, and other teaching materials in the country of study;

(5) Rent for instructional facilities in the country of study;

(6) Clerical and professional services performed by resident instructional personnel in the country of study; and

(7) Other expenses in the country of study, if necessary for the project's success and approved in advance by the Secretary.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 664.40 What standards of conduct must be adhered to abroad?

The Secretary furnishes all U.S. participants going abroad under a grant authorized under this part with a statement prepared by the Board of Foreign Scholarships which sets forth the rights and obligations of participants. Each participant must adhere to the standards in the statement and comply with the legal and moral standards of the host country. Failure to do so may result in the revocation or termination of the fellowship by the Board of Foreign Scholarships.

(Authority: 22 U.S.C. 2452(b)(6), 2456, Policy Statements of the Board of Foreign Scholarships, 1972)

PART 665—HIGHER EDUCATION PROGRAMS IN MODERN FOREIGN LANGUAGE TRAINING AND AREA STUDIES—FOREIGN CURRICULUM CONSULTANTS PROGRAM

Subpart A—General

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665.2 Who is eligible to apply for assistance under the Foreign Curriculum Consultants Program?
665.3 Who is eligible to become a Foreign Curriculum Consultant?

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665.4 What requlations apply to the Foreign Curriculum Consultants Program?
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Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

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665.20 How does an applicant apply for a grant?

Subpart D—How Does the Secretary Make a Grant?

665.30 How does the Secretary evaluate an application submitted under the Foreign Curriculum Consultants Program?
665.31 What selection criteria does the Secretary use?
665.32 What priorities may the Secretary establish?
665.33 How does the Secretary select foreign curriculum consultants?
665.34 What costs does the Secretary pay?

Subpart E—What Conditions Must be Met by a Grantee?

665.40 What costs does the grantee pay?

AUTHORITY: Sec. 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

SOURCE: 48 FR 56191, Dec. 19, 1983, unless otherwise noted.

Subpart A—General

§ 665.1 What is the Foreign Curriculum Consultants Program?

(a) The Foreign Curriculum Consultants Program is designed to contribute to the development and improvement of curricula for teaching modern foreign languages and area studies in the United States.

(b) Under the program, the Secretary assists institutions of higher education, State and local educational agencies, and nonprofit private educational organizations that are improving developing curricula to teach modern foreign languages and area studies by recruiting and paying for part of the costs for a foreign curriculum consultant.

(Authority: 22 U.S.C. 2452(b)(6))

§ 665.2 Who is eligible to apply for assistance under the Foreign Curriculum Consultants Program?

The following are eligible to apply for assistance under this part:

(a) Institutions of higher education;

(b) A State educational agency;

(c) A local educational agency;

(d) A private nonprofit educational organization; and

(e) A consortium of institutions described in paragraphs (a), (b), (c), or (d) of this section.

(Authority: 22 U.S.C. 2452(b)(6))

§ 665.3 Who is eligible to become a Foreign Curriculum Consultant?

A foreign educator is eligible to be a candidate in the Foreign Curriculum Consultants Program if the individual—

(a) Has at least five years of experience as an educator in modern foreign languages or area studies and appropriate experience in curriculum planning and development, preparation of teaching materials, or training of teachers;

(b) Speaks English fluently;

(c) Is willing to apply for and receive an exchange visitor visa; and

(d) Possesses the special qualifications set forth in the applicant's request.

(Authority: 22 U.S.C. 2452(b)(6))

§ 665.4 What regulations apply to the Foreign Curriculum Consultants Program?

The following regulations apply to this program:

(a) The regulations in this Part 665; and,

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(Authority: 22 U.S.C. 2452(b)(6), 2452(e)(1), 2456(a)(2))

§ 665.5 What definitions apply to the Foreign Curriculum Consultants Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant

Application
Award
EDGAR
Fiscal Year
Grant
Grantee
Grant Period
Local educational agency
Nonprofit
Project
Project Period
Private
Public
Secretary
State educational agency

(Authority: 22 U.S.C. 2452(B)(6))

(b) *Definitions that apply to this program:* The following definitions apply to the Foreign Curriculum Consultants Program:

Area Studies means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

Binational commission means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

Board of Foreign Scholarships means the Presidentially appointed board which is responsible for supervision of the program covered by this part.

Institution of higher education means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 665.10 What activities does the Secretary assist?

(a) The Secretary awards grants to eligible applicants to enable them to bring foreign consultants to the United States for a year so that the consultants may assist the applicant in planning and developing curricula in modern foreign languages or area studies.

(b) A foreign consultant may—

(1) Review and evaluate textbooks and other educational materials;

(2) Develop new units of study;

(3) Prepare new instructional materials for use in the classroom;

(4) Conduct demonstration classes, workshops, and other in-service training for teachers;

(5) Evaluate library holdings and recommend new acquisitions;

(6) Speak at community functions; and,

(7) Teach (normally not to exceed one regular classroom course per semester).

(Authority: 22 U.S.C. 2452(b)(6))

Subpart C—How Does an Applicant Apply for a Grant?

§ 665.20 How does an applicant apply for a grant?

An applicant applies for a grant to receive the services of a foreign curriculum consultant by submitting an application which describes—

(a) The applicant's plant to improve or develop curriculum to teach modern foreign languages and area studies; and

(b) The manner in which the applicant will use a foreign curriculum consultant in that effort.

(Authority: 22 U.S.C. 2452(b)(6))

Subpart D—How Does the Secretary Make a Grant?

§ 665.30 How does the Secretary evaluate an application submitted under the Foreign Curriculum Consultants program?

(a) The Secretary evaluates an application submitted under this part based upon the criteria in § 665.31.

(b) In general, the Secretary awards up to 100 possible points. However, if priority criteria are used, the Secretary awards up to 110 possible points. The maximum possible points for each criterion are indicated in parentheses.

(c) All selections by the Secretary are subject to review and final approval by the Board of Foreign Scholarships.

(Authority: 22 U.S.C. 2452(b)(6))

§ 665.31 What selection criteria does the Secretary use?

The Secretary uses the criteria in this section to evaluate applications for the purpose of recommending to the Board of Foreign Scholarships projects for funding under this part. The criteria are weighted and may total 110 points:

(a) *Plan of operation* (Maximum 25 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project:

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Quality of key personnel* (Maximum 20 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) That costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows that the facilities, equipment, and/or supplies that the applicant plans to use are adequate.

(f) *Specific program criteria.* (Maximum 35 points).

(1) In addition to the general selection criteria contained in this section, the Secretary reviews each application for information that shows that the project meets the specific program criteria.

(2) The Secretary looks for information that shows—

(i) Potential impact of the applicant's plans for developing or improving its program in modern foreign languages or area studies; (Maximum 5 points).

(ii) The applicant's need for a foreign curriculum consultant; (Maximum 5 points).

(iii) Potential effective use of the results of the consultant's work following the completion of the project; (Maximum 5 points).

(iv) Appropriateness of the consultant's duties and the allocation of time among the duties; (Maximum 5 points).

(v) Approximate number of faculty, students, and members of the relevant community who are expected to be affected by the consultant's activities; (Maximum 5 points).

(vi) Concrete evidence that other educational institutions, agencies and organizations, other than the applicant, will share in the consultant's services and that they have participated in helping define the nature of these services; (Maximum 5 points) and,

(vii) Adequacy of the arrangements made for coordinating the consultant's work under the supervision of a project director. (Maximum 5 points).

(g) *Priorities.* (Maximum 10 points). The Secretary looks for information that shows the extent to which the project addresses program priorities in the field of modern foreign languages and area studies for that year.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

§ 665.32 What priorities may the Secretary establish?

(a) The Secretary may establish, for each funding competition, one or more of the following priorities:

(1) Specific countries or regions of study: for example, India or Kenya, the Middle East, North Africa, East Asia, or the languages of those areas.

(2) Levels of education: for example, elementary and secondary, postsecondary or postgraduate.

(3) The following types of activities: developing or revising language text books, developing or improving new courses, or methodology of foreign language instruction.

(b) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

§ 665.33 How does the Secretary select foreign curriculum consultants?

(a)(1) The Secretary forwards an approved application through the United States Information Agency to the appropriate American diplomatic mission abroad, and if appropriate, to the relevant binational commission, to enable the mission or commission to recruit qualified consultant candidates.

(2) The mission or commission forwards the names of the qualified candidates to the Secretary.

(b)(1) Upon receipt of the list of candidates, the Secretary forwards the names of approved candidates to each applicant for review and selection of the best qualified candidate.

(2) The Secretary forwards the names of the candidates selected by the applicants to the Board of Foreign Scholarships for approval.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

§ 665.34 What costs does the Secretary pay?

The Secretary makes awards under this part for use only on or after the effective date of the grant and only to pay for the following costs and allowances—

(a) Roundtrip international travel, for the consultant only, to and from the consultant's home country to the location of his or her assignment;

(b) An unaccompanied baggage allowance not to exceed a total of 300 pounds roundtrip from the consultant's home country to the location of his or her assignment;

(c) Eighty percent of the consultant's monthly maintenance; the monthly allowance for the 1984-1985 academic year shall be $2,000. This amount will be increased each year to correspond to the increase in the cost of living as represented by the increase in the Consumer Price Index; and

(d) Health and accident insurance, for the consultant only, under a U.S. Government contracted group insurance policy, to be arranged by the grantee institution.

Subpart E—What Conditions Must Be Met by a Grantee?

§ 665.40 What costs does the grantee pay?

The grantee pays—

(a) Twenty percent of the consultant's monthly maintenance allowance; and

(b) Travel costs within the United States incurred by the consultant in connection with his or her assignment.

(Authority: 22 U.S.C. 2452(b)(2), 2454(e)(1))

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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AUTHORITY: 20 U.S.C. 1085, 1088, 1091, 1094, and 1141, unless otherwise noted.

Subpart A—General

§ 668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program).

(b) As used in this part, an "institution" includes—

(1) A public or private nonprofit institution of higher education as defined in § 668.3;

(2) A proprietary institution of higher education as defined in § 668.4;

(3) A postsecondary vocational institution as defined in § 668.5; and

(4) A vocational school as defined in § 668.6.

(c) The Title IV, HEA programs include—

(1) The Pell Grant Program (20 U.S.C. 1070a *et seq.*; 34 CFR Part 690);

(2) The Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070b *et seq.*; 34 CFR Part 676);

(3) The State Student Incentive Grant (SSIG) Program (20 U.S.C. 1070c *et seq.*; 34 CFR Part 692);4

(4) The Robert C. Byrd Honors Scholarship (Byrd Scholarship) Program (20 U.S.C. 1070d-31 *et seq.*; 34 CFR Part 654);

(5) The Guaranteed Student Loan (GSL) Program (20 U.S.C. 1071 *et seq.*; 34 CFR Part 682);

(6) The Supplemental Loans for Students (SLS) Program (20 U.S.C. 1078-1; 34 CFR Part 682);

(7) The PLUS Program (20 U.S.C. 1078-2; 34 CFR Part 682);

(8) The Consolidation Loan Program (20 U.S.C. 1078-3; 34 CFR Part 682);

(9) The College Work-Study (CWS) Program (42 U.S.C. 2751 *et seq.*; 34 CFR Part 675);

(10) The Income Contingent Loan (ICL) Program (20 U.S.C. 1087aa *et seq.*; 34 CFR Part 673); and

(11) The Perkins Loan Program (20 U.S.C. 1087a *et seq.*; 34 CFR Part 674).

(Authority: 20 U.S.C. 1070 *et seq.*)

[52 FR 45724, Dec. 1, 1987]

§ 668.2 General definitions.

The following definitions apply to all Title IV, HEA programs:

Academic year: (a) A period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters or three quarters at an institution which measures academic progress in credit hours and uses a semester, trimester or quarter system;

(b) A period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours at an institution which measures academic progress in credit hours but does not use a semester, trimester or quarter system; or

(c) At least 900 clock hours at an institution which measures academic progress in clock hours.

(Authority: 20 U.S.C. 1088)

Award year: The period of time from July 1 of one year through June 30 of the following year.

Campus-based programs: (a) The Perkins Loan Program (34 CFR Part 674);

(b) The College Work-Study (CWS) Program 34 CFR Part 675); and

(c) The Supplemental Educational Opportunity Grant (SEOG) Program (34 CFR Part 676).

Clock hour: The equivalent of—

(a) A 50 to 60 minute class, lecture or recitation;

(b) A 50 to 60 minute faculty supervised laboratory, shop training, or internship; or

(c) Sixty minutes of preparation in a program of study by correspondence.

College Work Study Program (CWS): The part-time employment program for students authorized by Title IC-C of the HEA.

(Authority: 42 U.S.C. 2751-2756b)

Consolidation Loan Program: The loan program authorized by Title IV-B of the HEA.

(Authority: 20 U.S.C. 1078-3)

Defense loan: A loan made before July 1, 1972, Under Title II of the National Defense Education Act.

(Authority: 20 U.S.C. 421-429)

Dependent student: Any student who does not qualify as an independent student (see independent student).

Direct loan: A loan made under Title IV-E of the HEA after June 30, 1972, which does not satisfy the definition of "Perkins loan."

(Authority: 20 U.S.C. 1087aa *et seq.*)

Enrolled: The status of a student who—

(a) Has completed the registration requirements (except for the payment of tuition and fees) at the institution he or she is attending; or

(b) Has been admitted into a correspondence study program and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the school.

Guaranteed Student Loan (GSL) Program: The student loan program authorized by Title IV-B of the HEA.

(Authority: 20 U.S.C. 1071 *et seq.*)

HEA: The Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1070 *et seq.*.)

Income Contingent Loan (ICL) Program: The student loan program authorized by Title IV-D of the HEA.

(Authority: 20 U.S.C. 1087a *et seq.*)

Independent student: A student who qualifies as an independent student under section 411F(12) of the HEA for the Pell Grant Program and section 480(d) of the HEA for all the other Title IV, HEA programs.

(Authority: 20 U.S.C. 1070a-6; 20 U.S.C. 1087vv)

National Defense Student Loan Program: The student loan program authorized by Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421-429)

National Direct Student Loan (NDSL) Program: The student loan program authorized by Title VI-E of the HEA between July 1, 1972, and October 16, 1986.

(Authority: 20 U.S.C. 1087aa-1087ii)

One year training program: A program which is at least—

(a) Twenty-four semester or trimester hours or units, or 36 quarter hours or units at an institution using credit hours or units to measure academic progress;

(b) Nine hundred clock hours of supervised training at an institution using clock hours to measure academic progress; or

(c) Nine hundred clock hours in a correspondence program.

(Authority: 20 U.S.C. 1141(a))

Parent: A student's natural or adoptive mother or father. A parent also includes a student's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the student.

Pell Grant Program: The grant program authorized by Title IV-A-1 of the HEA.

(Authority: 20 U.S.C. 1070a)

Perkins loan: A loan made under Title IV-E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV-E of the HEA.

(Authority: 20 U.S.C. 1087aa *et seq.*)

Perkins Loan Program: The student loan program authorized by Title IV-E of the HEA after October 16, 1986.

(Authority: 20 U.S.C. 1087aa-1087ii)

PLUS Program: The loan program authorized by Title IV-B of the HEA.

(Authority: 20 U.S.C. 1078-2)

Recognized equivalent of a high school diploma: (a) A General Education Development (GED) Certificate; or

(b) A State certificate received by a student after the student has passed a State authorized examination which the State recognizes as the equivalent of a high school diploma.

(Authority: 20 U.S.C. 1141(a))

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

Robert C. Byrd Honors Scholarship (Byrd Scholarship) Program: The scholarship program authorized by Title IV-A-6 of the HEA.

(Authority: 20 U.S.C. 1070-31 *et seq.*)

Secretary: The Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Six month training program: (a) A program which is at least—

(1) Sixteen semester or trimester hours or units, or 24 quarter hours or units, at an institution using credit hours or units to measure academic progress;

(2) Six hundred clock hours of supervised training at an institution using clock hours to measure academic progress; or

(3) Six hundred clock hours in a correspondence program.

(b) A program which the Secretary determines is at least a six month training program on the basis of—

(1) A certification by the nationally recognized accrediting association that accredits the institution that the program offered by the institution is equal in course content and student workload to the comparable clock or credit hour program described in paragraphs (a)(1) through (3) of this definition; and

(2) The Secretary's ratification of that accrediting agency's determination.

(Authority: 20 U.S.C. 1088)

State: Each State of the Union, the Commonwealth of Puerto Rico, the District of Columbia, and, except for the Byrd Scholarship Program, American Samoa, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Authority: 20 U.S.C. 1141(b); 20 U.S.C. 1088(a); 20 U.S.C. 1070d-32)

State Student Incentive Grant (SSIG) Program: The grant program authorized by Title IV-A-3 of the HEA.

(Authority: 20 U.S.C. 1070c *et seq.*)

Supplemental Educational Opportunity Grant (SEOG) Program: The grant program authorized by Title IV-A-2 of the HEA.

(Authority: 20 U.S.C. 1070b *et seq.*)

Supplemental Loans for Students (SLS) Program: The loan program authorized by Title IV-B of the HEA and formerly called the ALAS Program.

(Authority: 20 U.S.C. 1078-1)

U.S. citizen or national: (a) A citizen of the United States; or (b) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 8 U.S.C. 1101)

(Authority: 20 U.S.C. 1070 *et seq.* unless otherwise noted)

[51 FR 41921, Nov. 19, 1986, as amended at 52 FR 45725, Dec. 1, 1987]

§§ 668.3—668.6 [Reserved]

§ 668.7 Eligible student.

(a) *Eligibility.* A student is eligible to receive assistance under the Pell Grant, SEOG, SSIG, GSL, PLUS, SLS, CWS, ICL, and Perkins Loan programs if the student—

(1) Is—

(i) A regular student enrolled or accepted for enrollment in an eligible program; or

(ii) For purposes of the GSL, PLUS, or SLS programs, enrolled as at least a half-time student in a course of study necessary for enrollment in an eligible program for no longer than one twelve-month period;

(2) Is not enrolled in either an elementary or secondary school;

(3)(i) Has a high school diploma or its recognized equivalent;

(ii) If enrolled at a public or private nonprofit institution of higher education—

(A) Is above the age of compulsory school attendance in the State in which the institution he or she is attending is located; and

(B) Except for the GSL, PLUS, or SLS programs, has the ability to benefit from the education or training offered by that institution, according to the requirements of paragraph (b) of this section;

(iii) If enrolled at a proprietary institution of higher education or postsecondary vocational institution—

(A) Is above the age of compulsory school attendance in the State in which the institution he or she is attending is located; and

(B) Has the ability to benefit from the training offered by that institution, according to the requirements of paragraph (b) of this section; or

(iv) If enrolled at a vocational school, has the ability to benefit from the training offered, according to the requirements of paragraph (b) of this section;

(4)(i) Is a U.S. citizen or national;

(ii) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(iii) Is a permanent resident of the Trust Territory of the Pacific Islands; or

(iv) For purposes of the Pell Grant, SEOG, and CWS programs—

(A) Is a citizen of the Federated States of Micronesia who was enrolled in an institution on November 2, 1986;

(B) Is a citizen of the Marshall Islands who was enrolled in an institution on October 20, 1986; or

(C) Is a citizen of the Republic of Palau who was enrolled in an institution on the day preceding the effective date of the Compact of Free Association;

(5) If currently enrolled, is maintaining satisfactory progress in his or her course of study according to the institution's standards of satisfactory progress and, if applicable, the requirements of paragraph (c) of this section;

(6) Except as provided in paragraph (d) of this section, does not owe, and certifies that he or she does not owe, a refund on a grant awarded under the Pell Grant, SEOG, or SSIG programs. A student owes a refund on a grant if the student receives a grant overpayment. A student receives a grant overpayment if the student's grant payments exceed the amount he or she is eligible to receive or use;

(7) Except as provided in paragraph (e) of this section, is not in default, and certifies that he or she is not in default, on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, GSL, PLUS, SLS, or Consolidation Loan programs;

(8) Has filed a Statement of Educational Purpose and Selective Service

Registration Status in accordance with the requirements of Subpart C;

(9) As determined by the institution that he or she attends, has not borrowed—

(i) In excess of the annual loan limits under the ICL, GSL, PLUS, or SLS programs in the same academic year for which he or she has applied for assistance under any Title IV, HEA program; and

(ii) In excess of the aggregate maximum loan limits under the ICL, Perkins Loan, GSL, PLUS, SLS, or Consolidation Loan programs;

(10) Has financial need, if applicable, in accordance with the requirements of the Title IV, HEA program under which he or she has applied for assistance; and

(11) Meets the requirements of—

(i) For purposes of the ICL Program, 34 CFR 673.22;

(ii) For purposes of the Perkins Loan Program, 34 CFR 674.9;

(iii) For purposes of the CWS Program, 34 CFR 675.9;

(iv) For purposes of the SEOG Program, 34 CFR 676.9;

(v) For purposes of the GSL, PLUS, or SLS programs, 34 CFR 682.201;

(vi) For purposes of the Pell Grant Program, 34 CFR 690.75; or

(vii) For purposes of the SSIG Program, 34 CFR 692.40.

(b) *Ability to benefit.* A student who is admitted to an institution as a regular student on the basis of that student's ability to benefit from the institution's education or training program remains eligible for any assistance under a Title IV, HEA program only if the student—

(1) Before admission—

(i) Is administered a nationally recognized, standardized, or industry-developed test, subject to criteria developed by the institution's nationally recognized accrediting agency or association, that measures the student's aptitude to complete successfully the educational program to which he or she has applied; and

(ii) Demonstrates that aptitude on that test;

(2) Receives a GED before the earlier of—

(i) The student's certification or graduation from his or her program of study; or

(ii) The completion of the student's first academic year of that program of study; or

(3) Enrolls in and successfully completes a remedial or developmental educational program of not more than one academic year that is prescribed by the institution, if the student—

(i) Is counseled before admission; or

(ii) Does not demonstrate the aptitude necessary to complete successfully the educational program to which he or she has applied on the test described in paragraph (b)(1) of this section.

(c) *Satisfactory progress.* In order for a student who has not received assistance under any Title IV, HEA program during an award year beginning before July 1, 1987, or for the GSL, PLUS, and SLS programs a period of enrollment beginning before July 1, 1987, to be eligible to receive assistance under any of those programs, an institution shall—

(1) Review the student's academic progress at the end of each academic year;

(2) Determine that the student is making satisfactory academic progress at the end of that student's second academic year of attendance at the institution on the basis of a finding that—

(i) The student has at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements; or

(ii) The student's failure to have at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements, was caused by—

(A) The death of a relative of the student;

(B) An injury or illness of the student; or

(C) Other special circumstances; and

(3) Determine, in the case of a student who was not making satisfactory academic progress in accordance with paragraph (c)(2) of this section at the end of that student's second academic year of attendance at the institution, that the student is making satisfac-

tory academic progress if that student subsequently obtains academic standing consistent with the institution's requirements for graduation at the end of a grading period.

(d) *Refund of a grant or scholarship overpayment.* Notwithstanding paragraph (a)(6) of this section, a student who owes a refund on a Pell Grant, SEOG, or SSIG due to an overpayment is eligible to receive assistance under a Title IV, HEA program under the following conditions:

(1) *Pell Grant overpayment.*

(i) If an institution makes a Pell Grant overpayment to a student, that student is eligible to receive assistance under a Title IV, HEA program if—

(A) The Student is otherwise eligible; and

(B) The institution can eliminate the overpayment in the award year in which it occurred by adjusting subsequent Pell Grant payments for that award year.

(ii) If an institution makes a Pell Grant overpayment to a student as a result of its own error and cannot eliminate the overpayment under paragraph (d)(1)(i)(B) of this section, the student is eligible to receive assistance under a Title IV, HEA program if the student—

(A) Is otherwise eligible; and

(B) Acknowledges the overpayment and agrees, in writing, to repay it within six months.

(2) *SEOG or SSIG overpayment.* If an institution makes an SEOG or SSIG overpayment to a student, that student is eligible to receive assistance under a Title IV, HEA program if—

(i) The student is otherwise eligible; and

(ii) The institution can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award period in which the overpayment occurred.

(e) *Default on a loan.* Notwithstanding paragraph (a)(7) of this section, a student who is in default on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, GSL, PLUS, SLS, or Consolidation Loan programs is eligible to receive assistance under a Title IV, HEA program under the following conditions:

(1) *GSL, PLUS, SLS, or Consolidation Loan programs.* A student who is in default on a loan made under the GSL, PLUS, SLS, or Consolidation Loan programs is eligible to receive assistance under a Title IV, HEA program if—

(i) The student is otherwise eligible; and

(ii) The Secretary, for a federally insured loan, or a guarantee agency, for a loan insured by that guarantee agency, determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *Defense/Direct Loan, Perkins Loan, and Income Contingent Loan programs.* A student who is in default on a loan made under the National Defense/Direct Student Loan, Perkins Loan, or Income Contingent Loan programs is eligible to receive assistance under a Title IV, HEA program if—

(i) The student is otherwise eligible; and

(ii) The institution that made the loan or the Secretary, if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay that loan.

(f) *Bankruptcy.* The Secretary does not consider a loan made under the ICL, National Defense/Direct Student Loan, Perkins Loan, Guaranteed Student Loan, PLUS, SLS, or Consolidation Loan progams that is discharged in bankruptcy to be in default for purposes of this section.

(Authority: 20 U.S.C. 1070a-1070c-1, 1077, 1078, 078-1-3, 1082, 1085, 1087a, 1087cc, and 1091; 42 U.S.C. 2753)

[52 FR 45725, Dec. 1, 1987]

§ 668.8 Eligible program.

(a) *General.* An eligible program is a program of education or training that—

(1) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma;

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located, and, except for the GSL, PLUS, or SLS programs, have the ability to benefit from the education or training offered; or

(iv) For a program at a vocational school, have completed or left elementary or secondary school and have the ability to benefit from the education or training offered;

(2)(i) Leads to a bachelor's associate, graduate, or professional degree;

(ii) Is at least a two-year program that is acceptable for full credit toward a bachelor's degree;

(iii) Is at least a one-year training program leading to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation;

(iv) Is, for a proprietary institution of higher education or a post-secondary vocational institution, at least a six-month training program leading to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation;

(v) Is, for a vocational school, a program of postsecondary vocational or technical education leading to a degree, certificate, or other recognized educational credential that—

(A) Is designed to provide occupational skills more advanced than those generally offered at the high school level and to fit individuals for useful employment in recognized occupations;

(B) In the case of an institution using clock hours to measure academic progress, is no less than 300 clock hours of supervised training;

(C) In the case of an institution using credit hours or units to measure academic progress, is no less than eight semester or trimester hours or units or 12 quarter hours or units;

(D) In the case of a program of study by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion in not less than six months; and

(E) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration; or

(vi) Is, for purposes of the GSL, PLUS, or SLS programs, at least a one-year training program for graduates of accredited health-professions programs that—

(A) Is provided by a hospital or health-care facility; and

(B) Leads to a degree or certificate; or

(3) For purposes of the Pell Grant, ICL, and SEOG programs, is an undergraduate program; and

(4) For the purposes of the Pell Grant Program, may consist of instruction in English as a second language (ESL) in accordance with paragraph (b)(2) of this section.

(b) *Pell Grant Program*—(1) *Study by correspondence.* For purposes of the Pell Grant Program, an eligible program of study by correspondence is an undergraduate program of education or training that meets the criteria for an eligible program in paragraph (a) of this section and that is designed to require at least 12 hours of preparation per week.

(2) *English as a second language (ESL).* (i) The Secretary considers a program that consists solely of instruction in ESL to be an eligible program if the program meets the requirements of paragraph (a) of this section and admits only students who the institution determines to need to ESL instruction to use already existing knowledge, training, or skills.

(ii) An institution shall document its determination that the instruction in ESL described in paragraph (b)(2)(i) of this section is necessary to enable each student whom it admitted to use already existing knowledge, training, or skills.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1070a, 1070b, 1070c-1070c-2, 1085, 1087aa-1087hh, 1088, 1091, and 1141; 42 U.S.C. 2753)

[52 FR 45727, Dec. 1, 1987; 53 FR 49147, Dec. 6, 1988]

Subpart B—Standards for Participation in Title IV, HEA Programs

SOURCE: 52 FR 45727, Dec. 1, 1987, unless otherwise noted.

§ 668.11 Scope.

(a) This supbart establishes standards that an institution must meet in order to participate in any Title IV, HEA program.

(b) Noncompliance with these standards by an institution already participating in any Title IV, HEA program may subject the institution to proceedings under Subpart G. These proceedings may lead to a fine, or a limitation, suspension, or termination of the institution's eligibility to participate in any or all of the Title IV, HEA programs.

(Authority: 20 U.S.C. 1094)

§ 668.12 Institutional participation agreement.

(a)(1) An institution may participate in any title IV, HEA program, other than the SSIG Program, only if—

(i) The Secretary determines that the institution meets the standards established in this subpart;

(ii) Except as provided in paragraph (a)(2) of this section, in the case of an institution seeking to participate for the first time in the Pell Grant Program, or the campus-based programs, or the GSL, SLS, or PLUS programs, the institution requires the following individuals to complete title IV, HEA program training provided by the Secretary:

(A) The individual designated by the institution under § 668.14(a); and

(B)(*1*) In the case of a for-profit institution, the chief administrator of the institution; or

(*2*) In the case of an institution other than a for-profit institution, the chief administrator of the institution, or another administrative official of the institution designated by the chief administrator; and

(iii) The institution enters into a written participation agreement with the Secretary, on a form approved by the Secretary.

(2) If either one of the two individuals who is otherwise required to complete training under paragraph (a)(1)(ii) of this section has previously completed title IV, HEA program training provided by the Secretary, the institution may elect to request an on-site title IV, HEA certification review by the Secretary instead of requiring that individual to complete again the title IV, HEA program training provided by the Secretary. If the institution requests the on-site review, it may not begin participation in the new title IV, HEA program or programs until the Secretary conducts the review and notifies the institution that it is in compliance with title IV, HEA statutory and regulatory requirements.

(b)(1) A participation agreement conditions the initial and continued eligibility of the institution to participate in any Title IV, HEA program upon compliance with the provisions of this part and the individual program regulations.

(2) In the participation agreement, the institution agrees—

(i) That it will comply with the statutory and regulatory requirements applicable to the Title IV, HEA programs, including the requirement that it will use funds it receives under any Title IV, HEA program and any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program;

(ii) That it has in operation a drug abuse prevention program that the institution has determined to be accessible to any officer, employee, or student at that institution; and

(iii) That it will not request from or charge any student a fee for processing or handling—

(A) Any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance; or

(B) The Federal Student Assistance Report required under section 483(f) of the HEA.

(c)(1) Except as provided under paragraph (c)(3) of this section, a participation agreement becomes effective on the date executed by the Secretary.

(2) A participation agreement supersedes any prior participation agreement between the Secretary and the institution.

(3) The new participation agreement of an institution that changed its ownership resulting in a change in control is effective on the date that the institution changed its ownership if—

(i) The institution's prior participation agreement was not terminated through procedures contained in Subpart G; and

(ii) Under the Pell Grant and campus-based programs, the date that the institution changed ownership that resulted in a change in control and the date on which the Secretary executed the new agreement took place in the same award year.

(d)(1) Except as provided in paragraph (e) of this section, the Secretary terminates a participation agreement through the procedures set forth in Subpart G.

(2) An institution may terminate a participation agreement.

(3) If the Secretary or the institution terminates a participation agreement under this paragraph, the Secretary establishes the termination date.

(e) An institution's participation agreement automatically terminates on the date the institution changes ownership that results in a change in control.

(Authority: 20 U.S.C. 1094)

[52 FR 45727, Dec. 1, 1987, as amended at 54 FR 46538, Nov. 3, 1989]

§ 668.13 Factors of financial responsibility.

(a) To begin and to continue participation in any Title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this section.

(b) In general, the Secretary considers an institution to be financially responsible if it is able to—

(1) Provide the services described in its official publications and statements;

(2) Provide the administrative resources necessary to comply with the requirements of this subpart; and

(3) Meet all of its financial obligations, including, but not limited to—

(i) Refunds of institutional charges; and

(ii) Repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.

(c) Notwithstanding paragraph (b) of this section, the Secretary considers an institution not to be financially responsible if—

(1) Under its basis of accounting, it—

(i) Has had operating losses over at least its two most recent fiscal years; or

(ii) Had, for its latest fiscal year, a deficit net worth. A deficit net worth occurs when the institution's liabilities exceed its assets;

(2) Under an accrual basis of accounting, it had, at the end of its latest fiscal year, a ratio of current assets to current liabilities of less than 1:1;

(3) Under a fund accounting system, its unrestricted current or operating fund reflects sustained material deficits over at least its two most recent fiscal years; or

(4)(i) The institution, its owner, or its chief executive officer has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or has been judicially determined to have committed fraud involving Federal funds;

(ii) The institution employs an individual in a capacity that involves the administration of Title IV, HEA program, or the receipt of Title IV, HEA program funds who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or who has been judicially determined to have committed fraud involving Federal funds; or

(iii) The institution uses any individual, agency, or organization that has been, or whose officers or employees have been—

(A) Convicted of, or pled *nolo contendere* or guilty to, a crime invovling the acquisition, use, or expenditure of Federal funds; or

(B) Judicially determined to have committed fraud involving Federal funds.

(d)(1) The Secretary may determine an institution to be financially responsible, even if the institution is considered not to be financially responsible under paragraphs (b), or (c)(1) through (c)(3) of this section, if the institution submits to the Secretary a letter of credit payable to the Secretary in an amount established by the Secretary, a performance bond in an amount established by the Secretary, or any other document requested by the Secretary that demonstrates that the institution has sufficient financial responsibility to begin or to continue to participate in any Title IV, HEA program.

(2) The Secretary may determine that an institution is financially responsible even if it would otherwise be considered not to be financially responsible under paragraph (c)(4) of this section if—

(i) The funds that were fraudulently obtained, or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid;

(ii) The individuals who were convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime; and

(iii) At least five years have elapsed from the date of the conviction, *nolo contendere* plea, guilty plea, or judicial determination.

(e) The Secretary determines whether an institution is financially responsible in accordance with paragraphs (b), (c), and (d) of this section by evaluating documents submitted by the institution and information obtained from other sources, including outside sources of credit information. To enable the Secretary to make this determination, an institution shall, to the extent requested by the Secretary, submit for its latest complete fiscal year and its current fiscal year—

(1) A profit and loss statement and a balance sheet that are based on the same basis of accounting used by the institution for financial reporting; or

(2) A financial audit report of the institution. The audit must have been conducted by a licensed certified public accountant in accordance with generally accepted auditing standards.

(f)(1) The Secretary may require that the documents referred to in paragraph (e)(1) of this section be audited and certified by a licensed certified public accountant in accordance with generally accepted auditing standards.

(2) If the Secretary requires an institution to submit a profit and loss statement, a balance sheet, or an audit report under paragraph (e) of this section, the Secretary may also require the institution to submit the accountant's or auditor's work papers.

(g)(1) An otherwise eligible institution shall obtain and keep current adequate fidelity bond coverage in order to protect the Government's interest in the Title IV, HEA program funds the institution received as a trustee. A fidelity bond indemnifies the holder against losses resulting from fraud or lack of integrity, honesty, or fidelity of its employees or officers.

(2) A public institution that is bonded by the State against the type of losses described in paragraph (g)(1) of this section does not have to obtain additional fidelity bond coverage.

(3) Any bond required under this paragraph must be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094 and Section 4 of Pub. L. 95-452)

[52 FR 45727, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 668.14 Standards of administrative capability.

To begin and to continue participation in any Title IV, HEA program, an institution shall demonstrate to the Secretary that it is capable of adequately administering that program under the standards established in this section. Except as provided in § 668.15, the Secretary considers an institution to have that administrative capability if it establishes and maintains student and financial records required under § 668.23 and the individual Title IV, HEA program regulations and if it—

(a) Designates a capable individual to be responsible for—

(1) Administering all the Title IV, HEA programs in which it participates; and

(2) Coordinating the Title IV, HEA programs with the institution's other

Federal and non-Federal programs of student financial assistance;

(b) Communicates to the individual designated to be responsible for administering Title IV, HEA programs, all the information received by any institutional office that bears on a student's eligibility for Title IV, HEA program assistance;

(c) Uses an adequate number of qualified persons to administer the Title IV, HEA program. In determining whether an institution uses an adequate number of qualified persons, the Secretary considers the number of students aided, the number and types of programs in which the institution participates, the number of applications evaluated, the amount of funds administered, and the financial aid delivery system used by the institution;

(d)(1) Administers Title IV, HEA programs with adequate checks and balances in its system of internal controls; and

(2) Divides the functions of authorizing payments and disbursing funds so that no office has responsibility for both functions with respect to any particular student aided under the programs;

(e) Establishes, publishes, and applies reasonable standards for measuring whether a student, who is otherwise eligible for aid under any Title IV, HEA program, is maintaining satisfactory progress in his or her course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has those standards;

(2) For a student enrolled in an eligible program who is to receive assistance under a Title IV, HEA program, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under a Title IV, HEA program; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum time frame in which the student must complete his or her educational objective, degree, or certificate. The time frame must be—

(A) Determined by the institution;

(B) Based on the student's enrollment status; and

(C) Divided into increments, not to exceed one academic year.

(iii) A schedule established by the institution designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment in order to complete the educational objective, degree, or certificate within the maximum time frame.

(iv) A determination at the end of each increment by the institution whether the student has successfully completed the appropriate percentage or amount of work according to the established schedule.

(v) Consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and programs established by the institution.

(vi) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(vii) Specific procedures under which a student may appeal a determination that the student is not making satisfactory progress.

(viii) Specific procedures for reinstatement of aid; and

(4) Meet or exceed the requirements of § 668.7(c);

(f) Develops and applies an adequate system to identify and resolve discrepancies in the information it receives from different sources with respect to a student's application for financial aid under Title IV, HEA programs. In determining whether the institution's system is adequate, the Secretary considers whether the institution obtains and reviews—

(1) All student aid applications, need analysis documents, Statements of Educational Purposes, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant;

(2) Any documents, including any copies of State and Federal income tax returns, that are normally collected by the institution to verify information received from the student or other sources; and

(3) Any other information normally available to the institution regarding a student's citizenship, previous educational experience, or other factors relating to the student's eligibility for Title IV, HEA program funds;

(g)(1) After conducting the review of an application provided for under paragraph (f) of this section, refers for investigation any information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application. The type of information that an institution must refer is that which is relevant to the eligibility of the applicant for Title IV, HEA program assistance, or the amount of the assistance. Examples of this type of information are:

(i) False claims of independent student status;

(ii) False claims of citizenship;

(iii) Use of false identities;

(iv) Forgery of signatures or certifications; and

(v) False statements of income:

(2) Makes the referrals described in paragraph (g)(1) of this section to the Office of Inspector General of the Department of Education, or, if more appropriate, to a State or local law enforcement agency with jurisdiction to investigate the matter; and

(3) Reports to the Office of Inspector General for each calendar year all referrals made to State or local law enforcement agencies under this paragraph for that calendar year;

(h) Provides adequate financial aid counseling to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding—

(1) The source and amount of each type of aid offered;

(2) The method by which aid is determined and disbursed or applied to a student's account; and

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, its standards of satisfactory progress, and other conditions that may alter the student's aid package; and

(i) Does not otherwise appear to lack the ability to administer the Title IV, HEA programs competently.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094)

[52 FR 45727, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 668.15 Additional factors for evaluating administrative capability.

(a) The Secretary considers it an indication of an institution's impaired capability of properly administering Title IV, HEA programs if—

(1) The fiscal year default rate, as defined in paragraph (f) of this section, on loans made under the GSL and SLS programs to students for attendance at that institution exceeds 20 percent;

(2) The default rate on loans made under the Perkins Loan program to students for attendance at that institution exceeds 20 percent of the principal of all those loans that have reached the repayment period; or

(3)(i) For an institution that has a common academic year for a majority of its students, more than 33 percent of the regular students who are enrolled on the first day of classes of an academic year withdraw from enrollment at that institution during that academic year; or

(ii) For an institution which does not have a common academic year for a majority of its students, more than 33 percent of the regular students enrolled on the first day of classes of any eight-month period withdraw during that period.

(b) If the GSL and SLS fiscal year default rate for an institution exceeds 20 percent for any fiscal year, the Secretary may, after such consultation with cognizant guarantee agencies as the Secretary deems appropriate, take one or more of the following actions:

(1) On or after January 1, 1991, initiate a proceeding under Subpart G of this part to limit, suspend, or terminate the eligibility of the institution to participate in the Title IV, HEA programs, if—

(i) The institution's GSL and SLS fiscal year default rate exceeds 40 percent for any fiscal year after 1989 and has not been reduced by an increment of at least 5 percent from its rate for the previous fiscal year (*e.g.*, a 50 percent rate was not reduced to 45 percent or below); or

(ii) The institution's GSL and SLS fiscal year default rate exceeds—

(A) 60 percent for fiscal year 1989;

(B) 55 percent for fiscal year 1990;

(C) 50 percent for fiscal year 1991;

(D) 45 percent for fiscal year 1992; or

(E) 40 percent for any fiscal year after fiscal year 1992.

(2) Require the institution to submit to the Secretary and one or more guarantee agencies the following information, within a time frame specified by the Secretary, to help the Secretary make a preliminary determination as to the appropriate action to be taken by the Secretary regarding the institution:

(i) A comprehensive written analysis of the causes of default by its sudents, for defaults in the first two years of repayment, that occurred during the three most recent calendar years ending not less than six months prior to the Secretary's request, and the factual basis for each conclusion reached in the analysis.

(ii) In the case of an institution offering an undergraduate non-baccalaureate degree program designed to prepare students for a particular vocational, trade, or career field, a statistical analysis showing the following for each program:

(A) The pass rates of students of the program in the three preceding calendar years ending not less than six months prior to the Secretary's request on any licensure or certification examination required by the State in which the institution is located for employment in the particular vocational, trade, or career field.

(B) The job placement rates for students who were originally scheduled, at the time of enrollment, to complete the program in the three most recent calendar years ending not less than eighteen months prior to the Secretary's request, as calculated in accordance with § 668.44(c)(1)(iii) of this part.

(C) The completion rates for students in the program for the three most recent calendar years ending not less than 18 months prior to the Secretary's request, as calculated in accordance with § 668.44(c)(1)(iv) of this part, for all of the institution's regular students in the aggregate, and as segregated according to the following categories:

(*1*) Title IV student aid recipients.

(*2*) High school graduates or holders of GED certificates at the time of enrollment.

(*3*) Students admitted on the basis of "ability to benefit" as defined in § 668.7(b) of this part.

(iii) A written description of all additional steps taken by the institution beyond those otherwise required by statute, regulation, or agreement with the Secretary, designed to reduce defaults by its students in the future.

(iv) Any other information relating to that determination, as reasonably required by the Secretary.

(c)(1) If the default rate for an institution under the Perkins Loan program exceeds the rate set forth in paragraph (a)(2) of this section, or if the withdrawal rate at an institution exceeds the rate set forth in paragraph (a)(3) of this section for an academic year, the Secretary may require the institution to submit for its latest complete fiscal year—

(i) A profit and loss statement and a balance sheet that are based on the same accounting procedures used by the institution for financial reporting;

(ii) A financial audit report of the institution. The audit must have been conducted by a licensed certified public accountant in accordance with generally accepted auditing standards; or

(iii) Other information required by the Secretary to determine the cause of the high withdrawal or default rate and the best measures for alleviating that condition.

(2) The date of preparation of the documents referred to in paragraph (c)(1)(i) through (iii) of this section must be within 12 months of the date of the Secretary's request.

(d) The Secretary may require that the profit and loss statement and balance sheet referred to in paragraph (c)(1)(i) of this section be audited and certified by a licensed certified public accountant in accordance with generally accepted auditing standards.

(e) If the institution's GSL and SLS fiscal year default rate, Perkins Loan program default rate, or withdrawal rate exceeds the rates set forth in paragraph (a)(1), (a)(2), or (a)(3) of this section respectively, in addition to, or in lieu of, taking the actions described in paragraph (b) of this section, or requiring the institution to submit the documents described in paragraph (c) of this section, the Secretary may require the institution, after notice and opportunity for a hearing, to take specified reasonable and appropriate measures to alleviate that condition as a requirement for its continued participation in the Title IV, HEA programs.

(f) The following definitions apply to this section and § 668.90 of this part:

(1) "Fiscal year default rate" means, for any fiscal year in which 30 or more current and former students at the institution enter repayment on GSL or SLS program loans received for attendance at the institution, the percentage of those current and former students who enter repayment on GSL or SLS program loans received for attendance at that institution in that fiscal year who default before the end of the following fiscal year. For any fiscal year in which less than 30 of the institution's current and former students enter repayment, the term "fiscal year default rate" means the average of the rate calculated under the preceding sentence for the three most recent fiscal years. In the case of a student who has attended and borrowed at more than one school, the student (and his or her subsequent repayment or default) is attributed to each school for attendance at which the student received a loan that entered repayment in the fiscal year. A loan on which a payment is made by the school, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(2) "Fiscal year" means the period from and including October 1 of a calendar year through and including September 30 of the following calendar year.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1082, 1094)

[54 FR 24116, June 5, 1989, as amended at 54 FR 35189, August 24, 1989; 54 FR 37267, Sept. 7, 1989]

§ 668.16 Federal interest in Title IV, HEA program funds.

Funds received under the Pell Grant SEOG, CWS, ICL, and Perkins Loan programs, except those funds received for the administrative cost allowance, are held in trust for the intended student beneficiaries and the Secretary. The institution, as a trustee of Federal funds, may not use or hypothecate (*i.e.* use as collateral) Title IV, HEA program funds for any other purpose.

(Authority: 20 U.S.C. 1070 *et seq.*)

§§ 668.17—668.18 [Reserved]

§ 668.19 Financial aid transcript.

(a)(1) An institution shall determine whether a student who is applying for assistance under any Title IV, HEA program has previously attended another eligible institution.

(2) Before a student who previously attended another eligible institution may receive any Title IV, HEA program funds, the institution or the student shall request each institution the student previously attended to provide a financial aid transcript to the institution the student is or will be attending.

(3) Except as provided in paragraph (a)(5) of this section, until an institution receives a financial aid transcript from each eligible institution the student previously attended, the institution—

(i) May withhold payment of Pell Grant, campus-based, and ICL funds to the student;

(ii) May disburse Pell Grant, campus-based, or ICL funds to the student for one payment period only;

(iii) May decline to certify the student's GSL or SLS application;

(iv) Shall not release GSL or SLS proceeds to a student; and

(v) Shall not certify an application for a PLUS Program loan sought on behalf of the student.

(4)(i) An institution may not hold GSL or SLS proceeds under paragraph (a)(3) of this section for more than 45 days. If an institution does not receive all required financial aid transcripts for a student within 45 days of the receipt of those proceeds, the institution shall return the loan proceeds to the appropriate lender.

(ii) An institution that certifies a GSL or SLS application before receiving all required financial aid transcripts shall return to the lender any GSL or SLS proceeds for the student if it receives a financial aid transcript indicating that—

(A) The amount of the loan proceeds would cause the student to exceed a loan limit under the GSL or SLS programs;

(B) The student is in default on any loan made under the GSL, PLUS, SLS, Consolidation Loan, ICL, National Defense/Direct Student Loan, or Perkins Loan programs; or

(C) The student owes a repayment on a grant received under the Pell Grant, SEOG, or SSIG programs.

(5) The institution may disburse Title IV, HEA program funds to the student without receiving a financial aid transcript from an eligible institution the student previously attended if the institution the student previously attended—

(i) Has closed, and information concerning the student's receipt of Title IV, HEA program assistance for attendance at that institution is not available;

(ii) Is not located in a State; or

(iii) Provides the disbursing institution with the written certification described in paragraph (b)(2)(ii) of this section.

(b) Upon request, each institution located in a State shall promptly provide to the institution for which a financial aid transcript is requested—

(1) All information in its possession concerning whether a student attended institutions other than itself and the institution for which the transcript is requested; and

(2)(i) A financial aid transcript for that student, if the student received or benefited from any Title IV, HEA program assistance while attending the institution providing the transcript; or

(ii) A written certification that—

(A) The student did not receive or benefit from any Title IV, HEA program assistance while attending the institution from which the transcript was requested; or

(B) The transcript pertains solely to years for which the institution no longer has and is no longer required to keep records under the applicable Title IV, HEA program recordkeeping requirements.

(c) A financial aid transcript must be signed by an official authorized by the institution providing the transcript to disclose information in connection with Title IV, HEA programs and must include, for any award year for which that institution has or is required to keep records—

(1) The student's name and social security number;

(2) Whether the student was treated as an independent student under any Title IV, HEA program in the award year preceding the award year for which a financial aid transcript is requested;

(3) Whether the student is in default on any loan made under the ICL, National Defense/Direct Student Loan, or Perkins Loan programs for attendance at the institution;

(4) To the extent that the institution is aware, whether the student is in default on any loan made under the GSL, PLUS, or SLS programs for attendance at the institution or any loan made under the Consolidation Loan Program;

(5) Whether the student owes a refund on any grant made under the Pell Grant or SEOG programs and, to the extent that the institution is

aware, the SSIG Program, for attendance at the institution;

(6) For the award year for which a financial aid transcript is requested, the student's Scheduled Pell Grant and the amount of Pell Grant funds disbursed to the student;

(7) The total amount of loans made under the ICL Program to the student for attendance at the institution;

(8) The total amount of loans made under the National Defense/Direct Student Loan and Perkins Loan programs to the student for attendance at the institution;

(9) Whether the student owed an outstanding balance on July 1, 1987 on either a Defense loan or Direct loan made for attendance at the institution;

(10) The amount of and period covered by each loan made to the student under the GSL, PLUS, or SLS programs for attendance at the institution; and

(11) The amount of and period covered by each loan made under the PLUS Program on behalf of the student for attendance at the institution.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094)

[52 FR 45727, Dec. 1, 1987, as amended at 53 FR 33431, Aug. 30, 1988]

§ 668.20 Limitation on the amount of remedial coursework that is eligible for Title IV, HEA program assistance.

(a) A noncredit or reduced credit remedial course is a course of study designed to increase the ability of a student to pursue a course of study leading to a certificate or degree.

(1) A noncredit remedial course is one for which no credit is given toward a certificate or degree; and

(2) A reduced credit remedial course is one for which reduced credit is given toward a certificate or degree.

(b) Except as provided in paragraphs (c) and (d) of this section, in determining a student's enrollment status and cost of attendance, an institution shall include any noncredit or reduced credit remedial course in which the student is enrolled. The institution shall attribute the number of credit or clock hours to a noncredit or reduced credit remedial course by—

(1) Calculating the number of classroom and homework hours required for that course;

(2) Comparing those hours with the hours required for nonremedial courses in a similar subject; and

(3) Giving the remedial course the same number of credit or clock hours it gives the nonremedial course with the most comparable classroom and homework requirements.

(c) In determining a student's enrollment status under the Title IV, HEA programs or a student's cost of attendance under the campus-based, GSL, PLUS, and SLS programs, an institution may not take into account any noncredit or reduced credit remedial course if—

(1) That course is part of a program of instruction leading to a high school diploma or the recognized equivalent of a high school diploma, even if the course is necessary to enable the student to complete a degree or certificate program; or

(2) The educational level of instruction provided in the noncredit or reduced credit remedial course is below the level needed to pursue successfully the degree or certificate program offered by that institution after one year in that remedial course.

(d) Except as set forth in paragraph (f) of this section, an institution may not take into account more than one academic year's worth of noncredit or reduced credit remedial coursework in determining—

(1) A student's enrollment status under the Title IV, HEA programs; and

(2) A student's cost of attendance under the campus-based, GSL, PLUS, and SLS programs.

(e) One academic year's worth of noncredit or reduced credit remedial coursework is equivalent to—

(1) Thirty semester or 45 quarter hours; or

(2) Nine hundred clock hours.

(f) Courses in English as a second language do not count against the one-year academic limitation contained in paragraph (d) of this section.

(Authority: 20 U.S.C. 1094)

§ 668.21 Treatment of Pell Grant, SEOG, ICL, and Perkins Loan program funds if the recipient withdraws, drops out, or is expelled before his or her first day of class.

(a)(1) If a student officially withdraws, drops out, or is expelled before his or her first day of class of a payment period, all funds paid to the student for that payment period for institutional or noninstitutional costs under the Pell Grant, SEOG, ICL, and Perkins Loan programs are an overpayment.

(2) The institution shall return that overpayment to the respective Title IV, HEA programs in the amount that the student received from each program.

(b) For purposes of this section, the Secretary considers that a student drops out before his or her first day of class of a payment period if the institution is unable to document the student's attendance at any class during the payment period.

(Authority: 20 U.S.C. 1094)

§ 668.22 Distribution formula for institutional refund and for repayments of disbursements made to the student for noninstitutional costs.

(a) *Repayment of institutional refunds to Title IV, HEA programs.* (1) An institution shall return a portion of a refund owed to a student to the Title IV, HEA programs if—

(i) The student officially withdraws, drops out, or is expelled from the institution on or after his or her first day of class of a payment period; and

(ii) The student received assistance under any Title IV, HEA program other than the CWS Program.

(2) For purposes of this section, an institutional refund means the amount paid for institutional charges for a payment period by financial aid and/or cash payments minus the amount retained by the institution for the portion of the payment period that the student was actually enrolled at the institution. The amount retained by the institution for the student's actual period of enrollment is calculated according to the institution's refund policy.

(3) The portion of the refund that the institution shall return to the Title IV, HEA program(s) is the lesser of—

(i) The amount of assistance received under the Title IV, HEA programs other than under the CWS Program for the payment period; or

(ii) The amount obtained by multiplying the institutional refund by the following fraction:

$$\frac{\text{Total amount of Title IV, HEA program assistance (exclusive of CWS Program earnings) awarded for the payment period}}{\text{Total amount of assistance (exclusive of all work earnings) awarded for the payment period.}}$$

(b) *Repayments to Title IV, HEA programs of disbursements made to the student for noninstitutional costs.* (1) If a student officially withdraws, drops out, or is expelled on or after his or her first day of class of a payment period, the institution shall determine what portion, if any, of the Title IV, HEA program assistance (other than from the CWS, GSL, PLUS, or SLS program received for that payment period by the student for non-institutional costs is an overpayment that must be repaid by the student. The institution shall make every reasonable effort to contact the student and recover the overpayment in accordance with program regulations (34 CFR Parts 673, 674, 675, 676, and 690).

(2)(i) To determine if any of the Title IV, HEA program assistance received by the student for noninstitutional costs constitutes an overpayment, the institution shall subtract the noninstitutional costs incurred by the student for that portion of the payment period during which the student was enrolled from the amount of assistance disbursed to the student.

(ii) Noninstitutional costs may include, but are not limited to, room and board for which the student does not contract with the institution, books, supplies, transportation, and miscellaneous expenses.

(3) The portion of the overpayment as determined according to paragraph (b)(2) of this section that the institu-

tion shall return to the Title IV, HEA program(s) is the lesser of—

(i) The amount of assistance received under the Title IV, HEA programs other than the CWS, GSL, PLUS, or SLS programs for the payment period; or

(ii) The amount obtained by multiplying the overpayment by the following fraction:

$$\frac{\text{Total amount of Title IV, HEA program assistance (exclusive of College Work Study and GSL, PLUS, and SLS loans) awarded for the payment period.}}{\text{Total amount of assistance (exclusive of all work earnings and GSL, PLUS, and SLS loans awarded for the payment period.}}$$

(c) *Payment period.* For purposes of this section—

(1) A payment period under the GSL, PLUS, and SLS programs is a semester, trimester or quarter. At an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of the academic year; and

(2) The amount of a loan made under GSL, PLUS, or SLS program is considered to be awarded in proportionate amounts corresponding to the number of payment periods calculated according to paragraph (c)(1) of this section.

(d) *Drop out date.* For purposes of this section, a student is considered to have dropped out on the last recorded date of class attendance by the student as documented by the institution.

(e) *Distribution among the Title IV, HEA programs.* An institution shall develop a written policy allocating the Title IV, HEA program portion of the refund determined under paragraph (a) of this section of the Title IV, HEA program portion of the overpayment determined under paragraph (b) of this section among the Title IV, HEA program(s) from which the student received aid. This allocation policy must be applied consistently to all students who have received Title IV, HEA program assistance and must conform to the following:

(1) No amount of the Title IV, HEA program portion of the refund or of the overpayment may be allocated to the CWS Program.

(2) No amount of Title IV, HEA program portion of the overpayment may be allocated to the GSL, PLUS or SLS program.

(3) The amount of the Title IV, HEA program portion of the refund or of the overpayment allocated to a specific Title IV, HEA program may not exceed the amount that the student received from that program.

(4) The amount of the Title IV, HEA program portion of the refund allocated to the GSL, PLUS, and SLS programs must be returned to the borrower's lender by the institution in accordance with program regulations (34 CFR Part 682).

(5) The amount of the Title IV, HEA program portion of the refund allocated to the Title IV, HEA programs other than the CWS, GSL, PLUS and SLS programs must be returned to the appropriate program account(s) by the institution within 30 days of the date that the student officially withdraws or is expelled or the institution determines that a student has unofficially withdrawn.

(6) The amount of the Title IV, HEA program portion of the overpayment allocated to the Title IV, HEA programs other than the CWS, GSL, PLUS, and SLS programs must be returned to the appropriate program account(s) within 30 days of the date that the student makes the repayment.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094)

[52 FR 45727, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 668.23 Audits, records, and examination.

(a) An institution which participates in the ICL (34 CFR Part 673), Perkins Loan (34 CFR Part 674), CWS (34 CFR Part 675), SEOG (34 CFR Part 676), GSL (34 CFR Part 682), PLUS (34 CFR Part 682), SLS, or Pell Grant (34 CFR Part 690) programs shall comply with the regulations for those programs concerning—

(1) Fiscal and accounting systems;

(2) Program and fiscal recordkeeping; and

(3) Record retention.

(b) For purposes of audit and examination, an institution which participates in any Title IV, HEA program shall give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records required by the program regulations and this part and to any other pertinent books, documents, papers, and records.

(c)(1) An institution which participates in the ICL, Perkins Loan, CWS, SEOG, GSL, PLUS, SLS, or Pell Grant programs shall have performed a financial and compliance audit of its Title IV, HEA programs. The audit shall be conducted by an independent auditor in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office's (GAO's) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.*

(2) Procedures for audits are contained in audit guides developed by, and available from, the Education Department's Office of the Inspector General. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO's *Standards.*

(3) The institution shall have an audit performed at least once every two years. Each audit must cover the institution's activities for the entire period of time since the preceding audit.

(4)(i) If the institution receives campus-based funds, the institution shall submit the audit report to the Inspector General by March 31 of the year following the last award year covered by the audit.

(ii) If the institution does not receive campus-based funds, the institution shall submit the audit report to the Inspector General by January 31 of the year following the last year covered by the audit.

(5) The institution shall—

(i) Give the Secretary and the Inspector General access to records or other documents necessary to review the audit; and

(ii) Include in any arrangement with an individual or firm conducting an audit described in this section a requirement that the individual or firm shall give the Secretary and the Inspector General access to records or other documents necessary to review the audit.

(d) The Secretary considers the audit requirement in paragraph (c) of this section to be satisfied by an audit conducted in accordance with the Single Audit Act (Chapter 75 of Title 31, United States Code).

(e) Upon written request, an institution shall give the Secretary access to all Title IV, HEA program and fiscal records, including records reflecting transactions with any financial institution with which it deposits or has deposited any Title IV, HEA program funds.

(f)(1) In addition to the records required under the applicable program regulations and this part, for each recipient of Title IV, HEA program assistance, the institution shall establish and maintain, on a current basis, records regarding—

(i) The student's admission to, and enrollment status at, the institution;

(ii) The program and courses in which the student is enrolled;

(iii) Whether the student is maintaining satisfactory progress in his or her course of study;

(iv) Any refunds due or paid to the student, the Title IV, HEA program account(s) and the student's lender under the GSL, PLUS, and SLS programs;

(v) The student's placement by the institution in a job if the institution provides a placement service and the student uses that service;

(vi) The student's prior receipt of financial aid (see § 668.19);

(vii) The verification of student aid application data; and

(viii) Information substantiating all disclosures made to a prospective student under § 668.44 (c) through (f) of this part.

(2)(i) An institution shall establish and maintain records regarding the educational qualifications of each regular student it admits, whether or not the student receives Title IV, HEA assistance, which are relevant to the institution's admission standards.

(ii) An institution at which only certain programs have been determined eligible shall establish and maintain records regarding the admissions requirements and educational qualifications of each regular student enrolled in the eligible program(s), whether or not the student received Title IV, HEA assistance.

(3) Records shall be—

(i) Systematically organized; and

(ii) Readily available for review by the Secretary at the geographical location where the student will receive his or her degree or certificate of program or course completion.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1088, 1094, 1141 and section 4 of Pub. L. 95-452)

[52 FR 45727, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 54 FR 24117, June 5, 1989, 54 FR 35189, Aug. 24, 1989]

§ 668.24 Audit exceptions and repayments.

(a)(1) If, as a result of a Federal audit or an audit performed at the direction of the institution, the Education Department's Inspector General questions an expenditure or the institution's compliance with an applicable requirement (including the lack of proper documentation), the Inspector General notifies the Secretary and the institution of the questioned expenditure or procedure.

(2) If the institution believes that the questioned expenditure or procedure was proper, it shall notify the Secretary in writing of its position and the reasons for its position.

(3) The institution's response must be received by the Secretary within 35 days of the date of the Inspector General's notification to the institution.

(b)(1) Based on the audit finding and the institution's response, the Secretary determines the amount of funds improperly spent, if any, and instructs the institution as to the manner of repayment.

(2) The institution shall repay those funds within 45 days of the date of the Secretary's notification, unless—

(i) The institution files an appeal under the procedures established in Subpart H; or

(ii) The Secretary permits a longer repayment period.

(3) If the institution is found to have expended funds improperly under the proceedings established in Subpart H, the institution shall repay those funds within 30 days of a final determination under Subpart H unless the Secretary permits a longer repayment period.

(Authority: 20 U.S.C. 1094)

§ 668.25 Loss of institutionalized eligibility.

(a) When an institution loses its eligibility or ceases to provide educational instruction, it shall—

(1) Immediately notify the Secretary of that fact;

(2) Refund to the Federal government, or otherwise dispose of under instructions from the Secretary, any unobligated Title IV, HEA program funds and any GSL, PLUS, or SLS proceeds it has received, except—

(i) Those funds for which it has made a commitment but not yet paid to students in that payment period; and

(ii) Its administrative allowance, if applicable;

(3) Submit to the Secretary within 45 days after the effective date of closing or loss of eligibility—

(i) All financial, performance, and other reports required by each appropriate Title IV, HEA program regulation; and

(ii) A letter of engagement for an audit or an audit report of all Title IV, HEA program funds it received;

(4) Inform the Secretary of the arrangements it has made for the proper retention and storage for a minimum of five years of all records concerning the administration of the Title IV, HEA programs;

(5) Inform the Secretary of how it will provide for the collection of any outstanding Title IV, HEA loans; and

(6) Distribute refunds of unearned tuition and fees according to § 668.21.

(b) For the purposes of this section—

(1) A commitment under the Pell Grant Program occurs after a student

is enrolled and attending the institution and has submitted a valid student aid report to the institution;

(2) A commitment under the campus-based and ICL programs occurs when the student is enrolled and attending the institution and has received an award letter from the institution; and

(3) A commitment under the GSL, PLUS, and SLS programs occurs when the Secretary or a guarantee agency advises the lender that the loan is guaranteed.

(Authority: 20 U.S.C. 1094)

Subpart C—Statement of Educational Purpose and Selective Service Registration Status

SOURCE: 50 FR 26953, June 28, 1985, unless otherwise noted.

§ 668.31 Scope.

This subpart establishes rules by which an otherwise eligible student files a Statement of Educational Purpose and a Statement of Registration Status in order to receive assistance under any title IV, HEA program.

(Authority: 20 U.S.C. 1091 and 50 U.S.C. App. 462)

§ 668.32 Statement of Educational Purpose.

(a) Before receiving any funds under any Title IV, HEA program, a student shall file a Statement of Educational Purpose for each award year with the institution, or under the GSL, PLUS, or SLS programs, with the lender. In this statement the student shall—

(1) Include his or her social security number or if he or she does not have a social security number, his or her student identification number; and

(2) Certify that he or she will use any funds received under these programs solely for educational expenses connected with attendance at the institution at which the student is enrolled or accepted for enrollment, or, for the purposes of the GSL, PLUS, or SLS programs, at the institution named on the student's loan application.

(b) Except as provided in paragraph (c) of this section, the student shall file the Statement of Educational Purpose once for each award year, or, under the Campus-Based programs, either once for each award year or once for each 12-month period for which a determination of need is made.

(c) A student is only required to file the Statement of Educational Purpose once for his or her course of study if—

(1) The course of study is one academic year or less in length; and

(2) The student is to complete the course of study within a 12-month period.

(d) Until a student who is applying for Title IV, HEA program assistance under the Pell Grant, campus-based, SSIG or ICL programs files a Statement of Educational Purpose with the institution, an institution may not, for any period of instruction, disburse funds to the student under any Title IV, HEA program.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1091)

[50 FR 26953, June 28, 1985, as amended at 51 FR 43161, Nov. 28, 1986; 52 FR 45734, Dec. 1, 1987; 53 FR 49147, Dec. 6, 1988]

§ 668.33 Statement of Registration Status.

(a)(1) Except as provided in paragraph (b) or (c) of this section, until a student who is applying for title IV, HEA program assistance, or under the PLUS Program, who will benefit from the loan, files a Statement of Registration Status with the institution, an institution may not, for any period of instruction—

(i) Disburse funds to the student under any title IV, HEA program; or

(ii) Certify the institutional portion of the application under the Guaranteed Student Loan or PLUS Program.

(2) In the Statement of Registration Status the student shall certify either that he is registered with Selective Service or that, for a specified reason, he or she is not required to be registered.

(b) An institution may waive the requirement that a student file a Statement of Registration Status if the institution determines, based on clear and unambiguous evidence, that the student is not required to be registered with Selective Service.

(c) The requirement set forth in paragraph (a) of this section does not apply to students who are—

(1) Enrolled in an officer procurement program the curriculum of which has been approved by the Secretary of Defense at the following institutions:

(i) The Citadel, Charleston, South Carolina;

(ii) North Georgia College, Dahlonega, Georgia;

(iii) Norwich University, Northfield, Vermont; or

(iv) Virginia Military Institute, Lexington, Virginia;

(2) Commissioned officers of the Public Health Service and members of the Reserve of the Public Health Service who are on active duty as provided in section 6(a)(2) of the Military Selective Service Act; or

(3) Unable to present themselves for registration for reasons beyond their control, such as being hospitalized, incarcerated, or institutionalized.

(d) Except as provided in paragraph (e) of this section, a student required under paragraph (a) of this section to file a Statement of Registration Status shall do so once for each award year. If the student's status under registration law changes during the award year after he has completed the Statement of Registration Status, the student is not required to file a new statement for that award year.

(e) An institution may waive the requirement that a student file a Statement of Registration Status once for each award year, if—

(1) The institution already has on file a Statement of Registration Status for that student; and

(2) The student's status under registration law has not changed since the institution received the most recently filed Statement of Registration Status.

(f) An institution which waives the requirement that a student file the Statement of Registration Status is liable for any title IV aid provided to a student who was required to register, but who was not registered, if—

(1) The institution made its determination that the student was not required to register on the basis of ambiguous information regarding his status under registration law; or

(2)(i) The institution had conflicting information about whether the student was required to register, and

(ii) Its determination that the student was not required to register was not reasonable in the light of all available information.

(g) An institution which accepts a Statement of Registration Status from a student is liable for any title IV aid provided to a student who was required to register, but who was not registered, if the institution—

(1) Has information that conflicts with the student's Statement; and

(2) Its acceptance of the student's representation on the Statement regarding his status was not reasonable in light of all the available information.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 50 U.S.C. App. 462)

[50 FR 26953, June 28, 1985, as amended at 51 FR 43161, Nov. 28, 1986; 53 FR 49147, Dec. 6, 1988]

§ 668.34 Model Statement of Educational Purpose and Registration Status.

The Secretary considers the following statement to satisfy the requirements of §§ 668.32 and 668.33(a) and the notification requirement of § 668.35(a):

STATEMENT OF EDUCATIONAL PURPOSE

I certify that I will use any money I receive under a Title IV, HEA loan, grant, work study, or scholarship program only for expenses related to my study at (Name of Institution)

STATEMENT OF REGISTRATION STATUS

—— I certify that I am not required to be registered with Selective Service because:

—— I am female.

—— I am in the armed services on active duty. (Note: Does not apply to members for the Reserves and National Guard who are not on active duty.)

—— I have not reached my 18th birthday.

—— I was born before 1960.

—— I am a permanent resident of the Trust Territory of the Pacific Islands.

— I am a citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

— I certify that I am registered with Selective Service.

Signature: ———

Date: ———

Social Security Number (or Student Identification Number only if you have no Social Security Number): ———

(Approved by the Office of Management and Budget under control number 1840-0537)

[52 FR 45734, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 668.35 Notification and administrative review.

(a)(1) *General notice.* An institution shall provide general written notice to any student seeking aid under any title IV, HEA program that in order to receive this aid, a student must register with Selective Service, if required to do so under registration law.

(2) *Specific notice.* Before denying aid to any student under any title IV, HEA program who is required by law to register with the Selective Service, but fails to do so, or who fails to file the Statement of Registration Status in accordance with § 668.33, the institution shall inform that student in writing that he or she will be denied title IV, HEA program assistance.

(b)(1) A student notified under paragraph (a)(2) of this section who has not registered although required to do so may establish his eligibility for title IV, HEA program assistance for the award year in which he was notified under paragraph (a)(2) of this section by registering with Selective Service and filing a Statement of Registration Status before the end of that award year.

(2) A student notified under paragraph (a)(2) of this section who fails to file a Statement of Registration Status but has registered with the Selective Service or is not required to register with the Selective Service may establish his or her eligibility for title IV, HEA program assistance for the award year in which he was notified under paragraph (a)(2) of this section by filing a Statement of Registration Status within 30 days of the receipt of the notice or the end of the same award year, whichever is later.

(c) *Administrative review.* (1) A student who is required to register with the Selective Service and has been denied title IV, HEA program assistance because he has not proven to the institution that he has complied with that requirement may seek a hearing from the Secretary by filing a request in writing with the Secretary. The student must submit with that request—

(i) A statement that he is in compliance with registration requirements;

(ii) A concise statement of the reasons why he has not been able to prove that he is in compliance with those requirements; and

(iii) Copies of all material that he has already supplied to the institution to verify his compliance.

(2) The Secretary provides an opportunity for a hearing to a student who—

(i) Asserts that he is in compliance with registration requirements; and

(ii) Files a written request for a hearing in accordance with paragraph (c)(1) of this section within the award year for which he was denied title IV, HEA program assistance or within 30 days following the end of the payment period, whichever is later.

(3) An official designated by the Secretary shall conduct any hearing held under paragraph (c)(2) of this section. The sole purpose of this hearing is the determination of compliance with registration requirements. At this hearing, the student retains the burden of proving compliance, by credible evidence, with the requirements of the Military Selective Service Act. The designated official shall not consider challenges based on constitutional or other grounds to the requirements that a student state and verify, if required, compliance with registration requirements, or to those registration requirements themselves.

(d) Any determination of compliance made under this section is final unless reopened by the Secretary and revised on the basis of additional evidence.

(e) Any determination of compliance made under this section is binding only for purposes of determining eligibility for title IV, HEA program assistance.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 50 U.S.C. App. 462)

[50 FR 26953, June 28, 1985, as amended at 53 FR 49147, Dec. 6, 1988]

§ 668.36 Record retention requirements.

An institution shall include in each student's record in accordance with the record retention provisions in each of the title IV, HEA program regulations—

(a) The signed Statement of Educational Purpose;

(b) The signed Statement of Registration Status, if required; and

(c) Any documents used to verify the student's registration status.

(Authority: 20 U.S.C. 1091 and 50 U.S.C. App. 462)

Subpart D—Student Consumer Information Services

SOURCE: 51 FR 43323, Dec. 1, 1986, unless otherwise noted.

§ 668.41 Scope and special definition.

(a) Each institution participating in any Title IV, HEA program shall disseminate to all enrolled students, and to prospective students upon request, through appropriate publications and mailing, information concerning—

(1) The institution (see § 668.44); and

(2) Any student financial assistance available to students enrolled in the institution (see § 668.43).

(b) The following definition applies to this subpart: *Prospective student:* An individual who has contacted an institution participating in any Title IV, HEA program for the purpose of requesting information concerning admission to the institution.

(Authority: 20 U.S.C. 1092)

§ 668.42 Preparation and dissemination of materials.

For each award year in which it participates in any Title IV, HEA program, an institution shall—

(a) If necessary, prepare and publish materials covering the topics set forth in § 668.43 and § 668.44; and

(b) Make those materials available through appropriate publications and mailings to—

(1) All currently enrolled students; and

(2) Any prospective student, upon request of that student.

(Authority: 20 U.S.C. 1092)

§ 668.43 Financial assistance information.

(a)(1) Information on financial assistance that the institution must publish and make readily available to current and prospective student's under this subpart includes, but is not limited to, a description of all the Federal, State, local, private and institutional student financial assistance programs available to students who enroll at that institution.

(2) These programs include both need-based and non-need-based programs.

(3) The institution may describe its own financial assistance programs by listing them in general categories.

(b) For each program referred to in paragraph (a) of this section, the information provided by the institution must describe—

(1) The procedures and forms by which students apply for assistance;

(2) The student eligibility requirements;

(3) The criteria for selecting recipients from the group of eligible applicants; and

(4) The criteria for determining the amount of a student's award.

(c) The institution shall describe the rights and responsibilities of students receiving financial assistance and, specifically, assistance under the title IV, HEA programs. This description must include specific information regarding—

(1) Criteria for continued student eligibility under each program;

(2)(i) Standards which the student must maintain in order to be considered to be making satisfactory progress in his or her course of study for the purpose of receiving financial assistance; and

(ii) Criteria by which the student who has failed to maintain satisfactory progress may re-establish his or her eligibility for financial assistance;

(3) The method by which financial assistance disbursements will be made to the students and the frequency of those disbursements;

(4) The terms of any loan received by a student as part of the student's financial assistance package, a sample loan repayment schedule for sample loans and the necessity for repaying loans; and

(5) The general conditions and terms applicable to any employment provided to a student as part of the student's financial assistance package.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1092)

§ 668.44 Institutional information.

(a) Institutional information that the institution must publish and make readily available to current and prospective students under this subpart includes, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Transportation costs for commuting students or for students living on or off-campus; and

(v) Any additional cost of a program in which the student is enrolled or expresses a specific interest;

(2) A statement of the refund policy of the institution for the return of unearned tuition and fees or other refundable portion of costs paid to the institution;

(3) A statement of the institution's policies regarding the distribution of any refund due to the Title IV, HEA programs as required by § 663.21;

(4) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(5) The names of associations, agencies or governmental bodies which accredit, approve or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

(6) A description of any special facilities and services available to handicapped students; and

(7) The titles of persons designated under § 668.45 and information regarding how and where those persons may be contacted.

(b) The institution shall make available for review to any enrolled or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(c)(1)Prior to a prospective student's enrollment or execution of an enrollment contract, whichever occurs earlier, in an undergraduate non-baccalaureate degree program designed to prepare students for a particular vocational, trade, or career field, the institution shall disclose to the prospective student—

(i) All licensure or certification requirements established by the State in which the institution is located for the particular vocational, trade, or career field;

(ii) The pass rate of students in the program for the most recent calendar year that ended not less than six months prior to the date of disclosure, on any licensure or certification examination required by the State for employment in the particular vocational, trade, or career field;

(iii) The job placement rate for students who were originally scheduled, at the time of enrollment, to complete the program in the most recent calendar year that ended not less than 18 months prior to the date of disclosure. In calculating this rate, the institution shall consider as not having obtained employment any student for whom the institution does not possess evidence, documented in the student's file, showing that the student has obtained employment in the occupation for which the program is offered.

(iv) The completion rate for students in the program for the most recent calendar year that ended not less than

18 months prior to the date of disclosure. This rate is calculated by determining the percentage of students enrolled in the program who were originally scheduled, at the time of enrollment, to complete the program in that calendar year that successfully completed the program, or obtained full-time employment in the occupation for which the training was offered, within 150% of the amount of time normally required to complete the program; and

(v) Any other information necessary to substantiate the truth of any claim made by the institution as to job placement.

(2) For purposes of this paragraph (c), a student is "originally scheduled, at the time of enrollment, to complete the program" on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The "amount of time normally required to complete the program" is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student, or the period of time between the date of enrollment and the anticipated graduation date appearing on the student's loan application (if any), whichever is less. However, the "amount of time normally required to complete the program" must be calculated on a *pro rata* basis for students enrolled on a less than full-time basis.

(d) With respect to a program other than an undergraduate non-baccalaureate program designed to prepare students for a particular vocational, trade, or career field, prior to a prospective student's enrollment or execution of an enrollment contract, whichever is earlier, in a program for which the institution publicly makes a claim as to the job placement experience of its students as a means of attracting students to enroll in the program, the institution shall disclose to the prospective student—

(1)(i) The information described in paragraphs (c)(1) (i) through (iii) of this section, in the case of a baccalaureate or graduate program designed to prepare students for a particular vocational, trade, or career field; or

(ii) Other valid employment statistics for students who have enrolled in the program, for any other program;

(2) The information described in paragraph (c)(1)(iv) of this section; and

(3) Any other information necessary to substantiate the truth of the claim as to job placement.

(e) If an institution makes a claim to a prospective student regarding the starting salaries of its graduates, or the starting salaries or local availability of jobs in a field, it must disclose to the propsective student detailed statistics and other information necessary to substantiate the truthfulness of that claim.

(f)(1) The institution shall make the disclosure required under paragraphs (c)(1) (ii) through (iv) of this section using the applicable disclosure form set forth in Appendix A to this part, except that an institution may use an appropriate foreign language version of that form for a student whose primary language is not English.

(2) The institution shall indicate in the space provided for that purpose on the form the number of graduates of the program included in the calculation of the job placement rate disclosed on the form who state in writing that they have chosen not to attempt to obtain employment in the occupation for which the program is offered, and the number of students scheduled to graduate in that year, if any, who fail to indicate within 60 days, in response to a questionnaire seeking that information sent by the institution to the last known address of the student, whether they have obtained employment in that occupation.

(3) The completed disclosure form must be signed by the student and a copy thereof maintained by the institution in the student's file.

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1082, 1092)

[51 FR 43323, Dec. 1, 1986, as amended at 54 FR 24117, June 5, 1989, 54 FR 35189, Aug. 24, 1989; 54 FR 37267, Sept. 7, 1989]

§ 668.45 Availability of employees for information dissemination purposes.

(a) *Availability.* (1) Except as provided in paragraph (b) of this section each institution shall designate an employee or group of employees who shall be available on a full-time basis to assist enrolled or prospective students in obtaining the information specified in §§ 668.43 and 668.44.

(2) If the institution designates one person, that person shall be available, upon reasonable notice, to any enrolled or prospective student throughout the normal administrative working hours of that institution.

(3) If more than one person is designated, their combined work schedules must be arranged so that at least one of them is available, upon reasonable notice, throughout the normal administrative working hours of that institution.

(b) *Waiver.* (1) the Secretary may waive the requirement that the employee or group of employees designated under paragraph (a) of this section be available on a full-time basis if the institution's total enrollment, or the portion of the enrollment participating in the Title IV, HEA programs, is too small to necessitate an employee or group of employees being available on a full-time basis.

(2) In determining whether an institution's total enrollment or the number of Title IV, HEA program recipients is too small, the Secretary considers whether there will be an insufficient demand for information dissemination services among its enrolled or prospective students to necessitate the full-time availability of an employee or group of employees.

(3) To receive a waiver, the institution shall apply to the Secretary at the time and in the manner prescribed by the Secretary.

(c) The granting of a waiver under paragraph (b) of this section does not exempt an institution from designating a specific employee or group of employees to carry out on a part-time basis the information dissemination requirements.

(Authority: 20 U.S.C. 1092)

Subpart E—Verification of Student Aid Application Information

SOURCE: 51 FR 8948, Mar. 14, 1986, unless otherwise noted.

§ 668.51 General.

(a) *Scope and purpose.* (1) The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance in connection with the calculation of their expected family contributions (EFC) for the Pell Grant, the campus-based, and the Guaranteed Student Loan (GSL) programs.

(2) The regulations also cover the verification by institutions of information submitted under the GSL Program by applicants whose adjusted gross family income is $30,000 or less.

(b) *Applicant responsibility.* If the Secretary or the institution requests documents or information from an applicant under this subpart, the applicant must provide the specified documents or information.

(c) *Institutional Quality Control Pilot Project.* (1) For the 1986-87 through 1990-91 award years, the Secretary exempts institutions selected to participate in the institutional Quality Control Pilot Project from the requirements contained in the following sections:

(i) Section 668.53(a)(1) through (4).

(ii) Section 668.54(a)(1), (2), and (4).

(iii) Section 668.56.

(iv) Section 668.57, execpt that an institution shall require an applicant that it has selected for verification to submit to it a copy of the income tax return, if filed, of the applicant, his or her spouse, and his or her parents, if the income reported on the income tax return was used in determining the expected family contribution.

(v) Section 668.60(a).

(2) For the purpose of this section, the Institutional Quality Control Pilot Project is an experiment under which a participating institution develops and implements a quality control system in connection with its administration of the Title IV, HEA programs. Under such a quality control system, the institution must evaluate its cur-

rent procedures for administering the Title IV, HEA programs ("management assessment component"), identify the errors that result from its current procedures ("error measurement process component") and design corrections to its procedures that will enable it to eliminate or significantly reduce those errors ("corrective actions process component").

(d) *Foreign schools.* The Secretary exempts from the provisions of this subpart institutions participating in the GSL Program that are not located in a State.

(Authority: 20 U.S.C. 1094)

[51 FR 8948, Mar. 14, 1986, as amended at 51 FR 43333, Dec. 1, 1986; 52 FR 39892, Oct. 23, 1987]

§ 668.52 Definitions.

The following definitions apply to this subpart:

"Approved need analysis system" means a need analysis system which the Secretary has approved for an award year for determining an EFC under the campus-based programs.

"Base year" means the calendar year preceding the first calendar year of an award year.

"Edits" means a set of preestablished factors for identifying—

(a) Student aid applications that may contain incorrect, missing, illogical, or inconsistent information; and

(b) Randomly selected student aid applications.

"Expected family contribution (EFC)" means the amount an applicant and his or her spouse and family are expected to contribute toward the applicant's costs of attendance.

"GSL Needs Test Tables" means the tables in Appendix B to 34 CFR Part 682 used to calculate a GSL applicant's EFC.

"Student aid application which a person submits to have his or her EFC determined under the Pell Grant, campus-based, or GSL programs.

(Authority: 20 U.S.C. 1094)

§ 668.53 Policies and procedures.

(a) An institution shall establish and use written policies and procedures for verifying information contained in an application to have an EFC calculated in accordance with the provisions o this subpart. These policies and procedures must include—

(1) The time period within which a applicant shall provide the documentation;

(2) The consequences of an applicant's failure to provide required documentation within the specified tim period;

(3) The method by which the institution notifies an applicant of the results of verification;

(4) The procedures the institutio requires an applicant to follow to correct application information; and

(5) The procedures for making referrals under § 668.14(g).

(b) The institution's procedure must provide that it furnish, in a timely manner, to each applicant selected for verification—

(1) A clear explanation of the documentation needed to satisfy the verification requirements; and

(2) The applicant's responsibilities with respect to the verification of application information including the deadlines for completing any actions required under this subpart and the consequences of failing to complete any required action.

(Approved by the Office of Management and Budget under control number 1840-0570)

(Authority: 20 U.S.C. 1094)

§ 668.54 Selection of applicants for verification.

(a) *General requirements.* Except as provided in paragraph (b) of this section, an institution shall require an applicant to verify application information as specified in this paragraph. (1) If the edits specified by the Secretary select an applicant for verification, the institution shall require the applicant to verify all of the applicable items specified in § 668.56. The Secretary may enter into agreements with agencies or organizations with approved need analysis systems under which the Secretary provides the edits to the agencies or organizations and the agencies and organizations indicate to institutions the applications that the edits select for verification.

(2) The institution shall require every applicant to verify the applicable items specified in § 668.56 if—

(i) The applicant is selected by the institution to receive an award under the campus-based programs or requests the instittution to certify his or her application for a GSL loan; and

(ii) The institution does not receive—

(A) A Student Aid Report (SAR) for the applicant; or

(B) The output document generated by the applicant submitting an application to an agency or organization with an approved need analysis system that has an agreement with the Secretary described under paragraph (a)(1) of this section.

(3) If an institution believes that any information on an application used to calculate an EFC is inaccurate, it shall require that the applicant verify the information that it believes is inaccurate.

(4) If an applicant is selected to verify the information on his or her application under paragraph (a)(1) of this section for an award year, the institution shall require the applicant to verify the information on each additional application he or she submits for that award year, except for information already verified under a previous application submitted for an award year.

(b) *Exclusions from verification.* (1) An institution need not verify an application submitted for an award year if the applicant dies during the award year.

(2) Unless the institution has documentation that conflicts with information reported by an applicant or believes that the information reported by the applicant is incorrect, it does not have to verify applications of the following applicants:

(i) An applicant who is a legal resident of and, in the case of a dependent student, whose parents are also legal residents of the Trust Territory of the Pacific Islands (which includes the Marshall Islands and the Caroline Islands), Guam, American Samoa, or the Northern Mariana Islands.

(ii) An applicant who is incarcerated at the time at which verification would occur.

(iii) An applicant who is a dependent student whose parents are residing in a country other than the United States and cannot be contacted by normal means of communication.

(iv) An applicant who is an immigrant and who arrived in the United States during either calendar year of the award year.

(v) An applicant who is a dependent student whose parents are deceased or are physically or mentally incapacitated, or whose parents' address is unknown.

(vi) An applicant who does not receive assistance for reasons other than his or her failure to verify the information on the application.

(vii) An applicant who transfers to the institution, had previously completed the verification process at the institution from which he or she transferred, and applies for assistance on the same application used at the previous institution, if the current institution obtains—

(A) A letter from the previous institution stating that it has verified the applicant's information and, if relevant, the provision used in § 668.59 for not recalculating the applicant's EFC; and

(B) A copy of the verified application and, if the applicant applied for a Pell Grant, all pages of the applicant's SAR.

(3) An applicant need not document spouse information or provide a spouse's signature if—

(i) The spouse is deceased;

(ii) The spouse is mentally or physically incapacitated;

(iii) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(iv) The spouse cannot be located because his or her address is unknown.

(Approved by the Office of Management and Budget under control number 1840-0570)

(Authority: 20 U.S.C. 1094)

§ 668.55 Updating information.

(a)(1) Unless the provisions of paragraphs (a)(2) or (a)(3) of this section apply, an applicant is required to update—

(i) The number of family members in the applicant's household and the number of those household members attending postsecondary educational institutions, in accordance with provisions of paragraph (b) of this section; and

(ii) His or her dependency status in accordance with the provisions of paragraph (d) of this section.

(2) An institution need not require an applicant to verify the information contained in his or her application for assistance in an award year if—

(i) The applicant previously submitted an application for assistance for that award year;

(ii) The applicant updated and verified the information contained in that application; and

(iii) No change in the information to be updated has taken place since the last update.

(3) If the number of family members in the applicant's household, the number of those household members attending postsecondary educational institutions, or the applicant's dependency status changes as a result of a change in the applicant's marital status, the applicant shall not update those factors or that status.

(b) If the number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status—

(1) An applicant who is selected for verification shall update the information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information; and

(2) An applicant for a Pell Grant who is not selected for verification shall update the information contained in his or her application regarding those factors and shall certify that the information is correct as of the day that the applicant submits his or her first SAR to the institution or to the Secretary.

(c) If an applicant has received Pell Grant, campus-based, or GSL program assistance for an award year, the applicant subsequently submits another application for assistance under any of those programs for that award year, and the applicant is required to update household size and number attending post-secondary educational institutions on the subsequent application, the institution—

(1) Is required to take that newly updated information into account when awarding for that award year further Pell Grant or campus-based program assistance or certifying a GSL loan application; and

(2) Is not required to adjust the Pell Grant or campus-based program assistance previously awarded to the applicant for that award year, or any previously certified GSL loan application for that award year, to reflect the newly updated information unless the applicant would otherwise receive an overaward.

(d)(1) Except as provided in paragraphs (a)(3) and (d)(2) of this section, if an applicant's dependency status changes after the applicant applies to have his or her EFC calculated for an award year, the applicant must file a new application for that award year reflecting the applicant's new dependency status regardless of whether the applicant is selected for verification.

(2) If the institution has previously certified a GSL loan application for an applicant, the applicant shall not update his or her dependency status on the GSL loan application.

(Approved by the Office of Management and Budget under control number 1840-0570)

(Authority: 20 U.S.C. 1094)

§ 668.56 Items to be verified.

(a) Except as provided in paragraphs (b), (c), (d), (e), (f), and (g) of this section, an institution shall require an applicant selected for verification under § 668.54(a) (1) or (2) to submit acceptable documentation described in § 668.57 that will verify or update the following information used to determine the applicant's EFC:

(1) Adjusted gross income (AGI) for the base year.

(2) U.S. income tax paid for the base year.

(3)(i) For an applicant who is a dependent student, the aggregate

best copy available

number of family members in the household of the applicant's parents if—

(A) The applicant's parents are single, divorced, separated or widowed and the aggregate number of family members is greater than two; or

(B) The applicant's parents are married and the aggregate number of family members is greater than three.

(ii) For an applicant who is an independent student, the number of family members in the household of the applicant if—

(A) The applicant is single, divorced, separated, or widowed and the number of family members is greater than one; or

(B) The applicant is married and the number of family members is greater than two.

(4) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions if that number is greater than one.

(5) The factors relating to an applicant's independent student status.

(6) Untaxed income and benefits for the base year including—

(i) U.S. income tax deduction for a married couple if both work;

(ii) Social security benefits if—

(A) Verification is required by a comment on the applicant's SAR; or

(B) The applicant does not receive an SAR and the institution has information showing, or has reason to believe, that those benefits were received;

(iii) Child support if the institution has information showing; or has reason to believe, that child support was received;

(iv) U.S. income tax deduction for a payment made to an individual retirement account (IRA) or Keogh account; and

(v) The following other untaxed income and benefits:

(A) Untaxed portions of unemployment compensation.

(B) Untaxed dividends.

(C) Untaxed capital gains.

(D) Foreign income exclusion if the institution has information showing, or has reason to believe, that the foreign income was excluded.

(E) Earned income credit.

(b) For a GSL applicant selected for verification under § 668.54(a)(1) or (2) of this section—

(1) If the GSL applicant's adjusted gross family income is $30,000 or less, the institution shall require the applicant to submit acceptable documentation described in § 668.57 that verifies—

(i) The adjusted gross family income; and

(ii) The factors relating to an applicant's independent student status;

(2) If the GSL applicant's adjusted gross family income exceeds $30,000 and the institution uses the GSL Needs Test Tables, the institution shall require the applicant to submit acceptable documentation described in § 668.57 that verifies—

(i) The adjusted gross family income;

(ii)(A) For an applicant who is a dependent student, the aggregate number of family members in the household of the applicant's parents if—

(*1*) The applicant's parents are single, divorced, separated or widowed and the aggregate number of family members is greater than two; or

(*2*) The applicant's parents are married and the aggregate number of family members is greater than three; or

(B) For an applicant who is an independent student, the number of family members in the household of the applicant if—

(*1*) The applicant is single, divorced, separated or widowed and the number of family members is greater than one; or

(*2*) The applicant is married and the number of family members is greater than two;

(iii) The number of family members in the household who are enrolled as at least halt-time students in postsecondary educational institutions if that number is greater than one; and

(iv) The factors relating to an applicant's independent student status; or

(3) If the GSL applicant's adjusted gross family income exceeds $30,000 and the institution does not use the GSL Needs Test Tables, the institution shall require the applicant to submit acceptable documentation de-

scribed in § 668.57 that verifies the applicable items set forth in paragraph (a) of this section.

(c) For the Pell Grant Program, if an applicant is a dependent student and the applicant's income for the base year is used to calculate the applicant's EFC (student aid index), an institution need not require the applicant to verify his or her base year adjusted gross income, U.S. income tax paid, and untaxed income and benefits.

(d) If an applicant selected for verification submits an SAR to the institution or the institution receives an output document as decribed in § 668.54(a)(2)(ii)(B) within 90 days of the date the applicant signed his or her application, or if an applicant is selected for verification under § 668.54(a)(2), the institution need not require the applicant to verify—

(1) The number of family members in the household; or

(2) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions.

(e) If the number of family members in the household, the number of family members in the household who are enrolled as at least half-time students in postseconday educational institutions, independent student status, or the amount of child support reported by an applicant selected for verification is the same as that verified by the institution in the previous award year, the institution need not require the applicant to verify that information.

(f) If the family members who are enrolled as at least half-time students in postsecondary educational institutions are enrolled at the same institution as the applicant, and the institution verifies their enrollment from its own records, the institution need not require the applicant to verify this information.

(g) If the applicant, and the applicant's spouse, or the applicant's parents receive untaxed income or benefits from a Federal, State, or local government agency which determines their eligibility for that income or benefits by means of a "financial needs test," the institution need not require the applicant to verify untaxed income and benefits.

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(Authority: 20 U.S.C. 1094, 1095)

[51 FR 8948, Mar. 14, 1986, as amended at 51 FR 29398, Aug. 15, 1986]

§ 668.57 Acceptable documentation.

(a) *AGI and U.S. income tax paid.* (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution shall require an applicant selected for verification to verify adjusted gross income and U.S. income tax paid by submitting to it, if relevant—

(i) A copy of the income tax return of the applicant, his or her spouse, and his or her parents. The copy of the return must be signed by the filer of the return or by one of the filers of a joint return;

(ii) For a dependent student, a copy of each Internal Revenue Service (IRS) Form W-2 received by the parent whose income is being taken into account or a copy of the parent's IRS Schedule W filed with the parents' tax return if—

(A) The parents filed a joint return; and

(B) The parents are divorced or separated or one of the parents has died; and

(iii) For an independent student, a copy of each IRS Form W-2 he or she received or a copy of the student's IRS Schedule W filed with the student's tax return if the independent student—

(A) Filed a joint return; and

(B) Is a widow or widower, or is divorced or separated.

(2) If an individual who is required in paragraph (a)(1) of this section to provide a copy of his or her tax return does not have a copy of that return, the institution may require that individual to submit, in lieu of a copy of the tax return, a copy of the "IRS Listing of Tax Account Information."

(3) An institution shall accept, in lieu of a U.S. income tax return or an IRS listing of tax account information of a relevant individual, the documentation set forth in paragraph (a)(4) of

this section if the relevant individual for the base year—

(i) Has not filed a U.S. income tax return but has filed an income tax return with a central government outside the United States or with the Commonwealth of Puerto Rico;

(ii) Has not filed and will not filed a U.S. tax return;

(iii) Has been granted a filing extension by the IRS; or

(iv) Has requested the IRS to provide him or her with a copy of the tax return or a listing of tax account information and the IRS cannot locate the return or provide a listing of tax account information.

(4) An institution shall accept—

(i) For an individual described in paragraph (a)(3)(i) of this section, a copy of the signed income tax return filed by that individual for the base year with the central government or with the Commonwealth of Puerto Rico;

(ii) For an individual described in paragraph (a)(3)(ii) of this section, a statement signed by that individual certifying that he or she has not filed nor will file a U.S. income tax return for the base year and providing for that year that individual's—

(A) Sources of income earned from work as stated on the application; and

(B) Amounts of income from each source;

(iii) For an individual described in paragraph (a)(3)(iii) of this seciton—

(A) A copy of the IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the I.R.S. for the base year, or a copy of I.R.S.'s approval of an extension beyond the automatic four-month extension if the individual requested the additional extension of the filing time; and

(B) A copy of each IRS Form W-2 that the individual received for the base year, or for a self-employed individual, a statement signed by the individual certifying the amount of adjusted gross income for the base year; and

(iv) For an individual described in paragraph (a)(3)(iv) of this section—

(A) A copy of each IRS Form W-2 that the individual received for the base year; or

(B) For a self-employed individual, a statement signed by the individual certifying the amount of adjusted gross income for the base year.

(5) An institution shall require an individual described in paragraph (a)(3)(iii) of this section to provide to it a copy of his or her completed U.S. income tax return when filed. When an institution receives the copy of the return, it may reverify the adjusted gross income and taxes paid of the applicant and his or her family.

(6) If an individual who is required to submit an IRS Form W-2 or a copy of IRS Schedule W under this paragraph is unable to obtain one in a timely manner, the institution may permit that individual to set forth, in a statement signed by the individual, the amount of income earned from work as stated on the application, the source of that income, and the reason that the IRS Form W-2 or Schedule W is not available in a timely manner.

(b) *Number of family members in household.* An institution shall require an applicant selected for verification to verify the number of family members in the household by submitting to it a statement signed by the applicant and the applicant's parents if the applicant is a dependent student, or the applicant and the applicant's spouse if the applicant is an independent student, listing the name and age of each household member in the family and the relationship of that household member to the applicant.

(c) *Number of family household members enrolled in postsecondary institutions.* (1) Unless the institution believes that the information included on the application regarding the number of household members in the applicant's family enrolled in postsecondary institutions is inaccurate, the institution shall require an applicant selected for verification to verify that information by submitting to it a statement signed by the applicant and the applicant's parents if the applicant is a dependent student, or by the applicant and the applicant's spouse if the applicant is an independent student, which lists—

(i) The name of each family member who is or will be attending a postsecondary educational institution as at least a half-time student in the award year;

(ii) The age of each student; and

(iii) The name of each institution.

(2) If the institution believes that the information included on the application regarding the number of family household members enrolled in postsecondary institutions is inaccurate, the institution shall require—

(i) The statement required in paragraph (c)(1) of this section from the individuals described in paragraph (c)(1) of this section; and

(ii) A statement from each institution named by the applicant in response to the requirement of paragraph (c)(1)(iii) of this section that the household member in question is or will be attending the institution on at least a half-time basis, unless the institution the student is attending determines that such a statement would not be available because the household member in question has not yet registered at the institution he or she is planning to attend.

(d) *Independent student status.* (*1*) *Unmarried applicant.* Except as provided in paragraphs (d)(4) and (d)(5) of this section, an institution shall require an unmarried applicant selected for verification to submit to it—

(i) A copy of the base year, Federal income tax return of the applicant's parent(s) signed by the filer, or by one of the filers if a joint return, or if the parent(s) did not file and will not file a tax return for that year, a statement to that effect signed by the parent(s); and

(ii) A statement signed by the applicant and the applicant's parent(s) certifying that—

(A) The parent(s) will not claim the applicant as an exemption on their U.S. income tax return for the first calendar year of the award year;

(B) The parent(s) will not and did not provide the applicant with financial assistance of more than $750 in the first calendar year of an award year or the base year; and

(C) The applicant did not and will not live with the parent(s) for more than forty-two days in either of those years.

(2) *Married applicant.* Except as provided in paragraphs (d)(4) and (d)(5) of this section, an institution shall require a married applicant selected for verification to submit to it a written statement signed by the applicant and the applicant's parent(s) certifying that—

(i) The parent(s) will not claim the applicant as an exemption on their U.S. income tax return for the first calendar year of the award year;

(ii) The parent(s) did not and will not provide the applicant with financial assistance of more than $750 in the first calendar year of an award year; and

(iii) The applicant did not and will not live with the parent(s) for more than forty-two days in that year.

(3) *Conflicting documentation.* (i) Except as provided in paragraph (d)(3)(ii) of this section, if the Secretary or an institution has conflicting documentation regarding any of the three factors used to determine independent student status, the institution shall require an applicant selected for verification to submit to it—

(A) The documentation specified in paragraph (d)(1) of this section if the applicant is unmarried; or

(B) The documentation specified in paragraph (d)(2) of this section if the applicant is married.

(ii) The institution may consider the applicant's independent student status verified even though it or the Secretary has conflicting documentation if the applicant's parent's—

(A) Are deceased;

(B) Are physically or mentally incapacitated; or

(C) Cannot be located because either their address is unknown or they are residing in a country outside the United States and cannot be contacted by normal means of communication.

(4) *No conflicting documentation—Pell Grant Program.* For purposes of the Pell Grant Program, if the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status—

(i) The institution shall consider the independent student status of an applicant to be verified without requiring documentation or statements from the applicant or his or her parents if the applicant will be at least 23 years old on May 31 of the second calendar year of the award year for which aid is requested;

(ii) The institution shall consider the independent student status of a married applicant who is or will be under 23 year old on May 31 of the second calendar year of the award year for which aid is requested to be verified if the institution determines that—

(A) The applicant's parents have signed the applicant's original application; or

(B) The applicant's parents are unable or unwilling to provide the required statements; or

(iii) The institution shall consider the independent student status of an unmarried applicant who is under 23 years of age on May 31 of the second calendar year of the award year for which aid is requested to be verified if the institution determines that—

(A) The applicant had sufficient resources to support himself or herself and any dependents for the base year; and

(B) The applicant's parents are unable or unwilling to provide the tax return or statements required in paragraph (d)(1) of this section. For the purpose of this provision, the Secretary considers that the parent(s) have provided the statements required in paragraph (d)(1) of this section if the parent(s) signed the applicant's original application.

(5) *No conflicting documentation—campus-based and GSL programs.* For purposes of the campus-based and GSL programs—

(i) If the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status and the institution determines that the applicant's parents are not unable to provide the requested information and documentation, the institution may either—

(A) Require an applicant to provide to it the documents specified in paragraph (d)(1) of this section if the applicant is unmarried, or specified in paragraph (d)(2) of this section if the applicant is married, regardless of the circumstances concerning the age of the applicant or the willingness of the applicant's parents to provide the required tax return and statement; or

(B) Follow the requirements contained in paragraph (d)(4) of this section; or

(ii) If the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status and the institution determines that the applicant's parents are unable to provide the requested information and documentation, the institution must follow the requirements contained in paragraph (d)(4) of this section.

(e) *Untaxed income and benefits.* An institution shall require an applicant selected for verification to verify—

(1) Untaxed income and benefits described in § 668.56(a)(6)(i), (iv), and (v) by submitting to it—

(i) A copy of the U.S. income tax return signed by the filer or one of the filers if a joint return, if collected under paragraph (a) of this section, or the IRS listing of tax account information if collected by the institution to verify adjusted gross income; or

(ii) If no tax return was filed or will be filed, a statement signed by the relevant individuals certifying that no tax return was filed or will be filed and providing the sources and amount of untaxed income and benefits specified in § 668.56(a)(6)(v);

(2) Social security benefits by submitting to it—

(i) If the applicant's SAR requires that the applicant verify his or her social security benefits, a document from the Social Security Administration showing the amount of benefits received in the appropriate calendar year by the applicant's parents, the applicant, and the parent's children in the case of a dependent student, or by the applicant, the applicant's spouse, and the applicant's children in the case of an independent student; or

(ii) If the applicant does not receive an SAR, the document in paragraph (e)(2)(i) of this section or, at the institution's option, a statement signed by the applicant and the applicant's parent in the case of a dependent student or by the applicant in the case of an independent student certifying that the amount listed on the applicant's aid application is correct; and

(3) Child support received by submitting to it—

(i) A written statement signed by the applicant and the applicant's parent in the case of a dependent student, or by the applicant and the applicant's spouse in the case of an independent student, certifying the amount of child support received; and

(ii) If the institution believes that the information provided is inaccurate, a document such as—

(A) A copy of the separation agreement or divorce decree showing the amount of child support to be provided;

(B) A statement from the parent providing the child support showing the amount provided; or

(C) Copies of the child support checks or money order receipts.

(f) For the purpose of this section, an institution may accept in lieu of a copy of a Federal income tax return signed by the filer of the return or one of the filers of a joint return, a copy of the filer's return that has been signed by the preparer of the return or stamped with the name and address of the preparer of the return.

(Approved by the Office of Management and Budget under control number 1840-0570)

(Authority: 20 U.S.C. 1094)

[51 FR 8948, Mar. 14, 1986, as amended at 51 FR 29398, Aug. 15, 1986]

§ 668.58 Interim disbursements.

(a)(1) If an institution has documentation that indicates that the information included on an application is inaccurate, until the applicant verifies or corrects the information included on his or her application, the Secretary does not and the institution may not—

(i) Disburse any Pell Grant or campus-based program funds to the applicant;

(ii) Employ the applicant in its CWS Program; or

(iii) Certify the applicant's GSL loan application or process a GSL loan check for any previously certified GSL loan application.

(2) If an institution does not have documentation that indicates that the information included on an application is inaccurate, until the applicant is verified or corrects the information included on his or her application, the Secretary or the institution—

(i) May withhold payment of Pell Grant and campus-based funds; or

(ii)(A) May make one disbursement of any combination of Pell Grant, NDSL, or SEOG funds for the applicant's first payment period; and

(B) May employ an eligible student under the CWS Program until sixty (60) days after the date the applicant enrolled in that award year; and

(iii)(A) May withhold certification of the applicant's GSL loan application; or

(B) May certify the GSL loan application; and

(iv) Shall not disburse a GSL loan check.

(b) If an institution chooses to make disbursement under paragraph (a)(2)(ii) of this section, it shall be liable for any overpayment discovered as a result of the verification process.

(c) An institution may not hold any GSL check under paragraph (a)(2) of this section for more than forty-five (45) days. If the applicant does not complete the verification process within the forty-five (45) day period, the institution shall return the check to the lender.

(d)(1) If the institution receives a GSL loan check in an amount which exceeds the student's need for the loan based upon the verified information and the excess funds can be eliminated in subsequent disbursements for that period of instruction, the institution shall process the check and notify the lender to reduce the subsequent disbursements.

(2) If the institution receives a GSL loan check in an amount which exceeds the student's need for the loan based upon the verified information and the excess funds cannot be eliminated in subsequent disbursements for that period of instruction, the institution shall return the check to the lender.

(Authority: 20 U.S.C. 1094)

[51 FR 8948, Mar. 14, 1986, as amended at 51 FR 29398, Aug. 15, 1986; 51 FR 29920, Aug. 21, 1986]

§ 668.59 Consequences of a change in application information.

(a) For the Pell Grant Program—

(1) Except as provided in paragraphs (a) (2) and (3) of this section, if the information on an application changes as a result of the verification process, the institution shall require the applicant to resubmit his or her SAR to the Secretary if—

(i) The institution recalculates the applicant's EFC (student aid index), determines that the applicant's EFC changes, and determines that the change in the EFC changes the applicant's Pell Grant award; or

(ii) The institution does not recalculate the applicant's EFC.

(2) An institution need not require an applicant with a reported student aid index (SAI) of zero on his or her SAR to resubmit that SAR to the Secretary if it determines that the applicant's student aid index remains at zero on the basis of the verified information and the "Zero SAI Charts" that the Secretary publishes in the FEDERAL REGISTER.

(3) An institution need not require an applicant to resubmit his or her SAR to the Secretary, need not recalculate his or her EFC, or need not adjust his or her Pell Grant award if, as a result of the verification process, the institution finds—

(i) No errors in nondollar items used to calculate the applicant's EFC; and

(ii) No errors in dollar items or errors reflecting a change in dollar items of less than $200.

(b) For the Pell Grant Program—

(1) If an institution does not recalculate an applicant's EFC under the provisions of paragraphs (a) (2) and (3) of this section, the institution shall calculate and disburse the applicant's Pell Grant award on the basis of the applicant's original EFC.

(2)(i) Except as provided under paragraph (b)(2)(ii) of this section, if an institution recalculates an applicant's EFC because of a change in application information resulting from the verification process, the institution shall—

(A) Require the applicant to resubmit his or her application to the Secretary;

(B) Calculate the applicant's Pell Grant award on the basis of the EFC included on the corrected SAR; and

(C) Disburse any additional funds under that award only if the applicant provides it with the corrected SAR.

(ii) If an institution recalculates an applicant's EFC because of a change in application information resulting from the verification process and determines that the change in the EFC increases the applicant's award, the institution—

(A) May disburse the applicant's Pell Grant award on the basis of the original EFC without requiring the applicant to resubmit his or her SAR to the Secretary; and

(B) Except as provided in § 668.60(b), shall disburse any additional funds under the increased award reflecting the new EFC if the applicant provides it with the corrected SAR.

(c) For the campus-based and GSL programs—

(1) Except as provided in paragraph (c)(2) of this section, if the information on an application changes as a result of the verification process, the institution shall—

(i) Recalculate the applicant's expected family contribution; and

(ii) Adjust the applicant's financial aid package for the campus-based and GSL programs to reflect the new EFC if the new EFC results in an overaward of campus-based aid or decreases the applicant's recommended loan amount.

(2) An institution need not recalculate an applicant's EFC or adjust his or her aid package if, as a result of the verification process, the institution finds—

(i) No errors in nondollar items used to calculate the applicant's EFC; and

(ii) (A) No errors in dollar items or errors reflecting a change in dollar items of less than $800; or

(B) No errors in dollar items or errors reflecting a change in dollar items of less than $200 if the institution uses the Pell Grant Program's SAI as the applicant's EFC.

(d) If a GSL applicant reports an adjusted gross family income of less than $30,000 and verification shows that the adjusted gross family income is over $30,000, the institution shall calculate an EFC for the applicant and determine his or her financial need for a loan.

(e) If the institution selects an applicant for verification for an award year who previously received a loan under the GSL Program for that award year, and as a result of verification, the suggested loan amount is reduced by $200 or more, the institution shall comply with the procedures for notifying the borrower and lender specified in § 668.61(b).

(f) If the applicant has received funds based on information which may be incorrect and the institution has made a reasonable effort to resolve the alleged discrepancy, but cannot, the institution shall forward the applicant's name, social security number, and other relevant information to the Secretary.

(Approved by the Office of Management and Budget under control number 1840-0570)

(Authority: 20 U.S.C. 1094)

§ 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

(a) An institution shall require an applicant selected for verification to submit to it, within the period of time it or the Secretary specifies, the documents set forth in § 668.57.

(b) For purposes of the campus-based and GSL programs—

(1) If an applicant fails to provide the requested documentation within a reasonable time period established by the institution—

(i) The institution shall not—

(A) Disburse any additional NDSL or SEOG funds to the applicant;

(B) Continue to employ the applicant under CWS;

(C) Certify the applicant's GSL application; or

(D) Process a GSL check for the applicant;

(ii) The institution shall return to the lender any GSL check payable to the applicant; and

(iii) The applicant shall repay to the institution any NDSL or SEOG payments received for that award year;

(2) If the applicant provides the requested documentation after the time period established by the institution, the institution may, at its option, award aid to the applicant notwithstanding the prescriptions listed in paragraph (b)(1)(i) of this section; and

(3) An institution may not hold any GSL check under paragraph (b)(1) of this section for more than forty-five (45) days. If the applicant does not complete verification within the forty-five (45) day period, the institution must return the check to the lender.

(c) For purposes of the Pell Grant Program—

(1) An applicant may submit a verified SAR to the institution after the appropriate deadline specified in 34 CFR 690.61 but within an established additional time period set by the Secretary through publication in the FEDERAL REGISTER. If a verified SAR is submitted to the institution during the period permitted by the Secretary after the appropriate deadline specified in 34 CFR 690.61, payment must be based on—

(i) The original SAR, if the student aid index on the verified SAR is lower than the student aid index on the original SAR; or

(ii) The verified SAR, if the student aid index on the verified SAR is the same or higher than the student aid index on the original SAR; and

(2) If the applicant does not provide the requested documentation, and if necessary, a reprocessed verified SAR, within the period established in paragraph (c)(1) of this section, the applicant—

(i) Forfeits the Pell Grant for the award year; and

(ii) Shall return any Pell Grant payments previously received for that award year to the Secretary.

(d) The Secretary may determine not to process any subsequent Pell Grant application, and an institution, if directed by the Secretary, shall not process any subsequent application for campus-based and GSL program assistance of an applicant who has been requested to provide information until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

(e) If an applicant selected for verification for an award year dies during that award year, or before the deadline date for completing the verification process if that date extends into the subsequent award year, without completing the verification process, the institution shall not—

(1) Make any further disbursements on behalf of that applicant;

(2) Certify the applicant's GSL loan application or process a GSL check for the applicant; or

(3) Consider any funds it disbursed to that applicant under § 668.58(a)(2) as an overpayment.

(Authority: 20 U.S.C. 1094)

§ 668.61 Recovery of funds.

(a) If an institution discovers, as a result of the verification process, that an applicant received under § 668.58(a)(2)(ii) more than he or she was eligible to receive under the Pell Grant, NDSL, or SEOG programs, the institution shall eliminate the overpayment by—

(1) Adjusting subsequent financial aid payments in the award year in which the overpayment occurred; or

(2) Reimbursing the appropriate program account by—

(i) Requiring the applicant to return the overpayment to the institution if the institution cannot correct the overpayment under paragraph (a)(1) of this section; or

(ii) If the applicant does not return the overpayment, making restitution from its own funds by the earlier of the following dates:

(A) Sixty days after the applicant's last day of enrollment.

(B) The last day of the award year in which the institution disbursed Pell Grant, NDSL, or SEOG funds to the applicant.

(b) If the institution determines as a result of verification that a applicant received for an award year a GSL of $200 or more in excess of the student's financial need for the loan, the institution shall notify the student and the lender of the excess amount within thirty (30) days of the institution's determination that the borrower is ineligible for such amounts.

(Authority: 20 U.S.C. 1094)

Subpart F—Misrepresentation

SOURCE: 51 FR 43324, Dec. 1, 1986, unless otherwise noted.

§ 668.71 Scope and special definitions.

(a) This subpart establishes the standards and rules by which the Secretary may initiate a proceeding under Subpart G against an otherwise eligible institution for any substantial misrepresentation made by that institution regarding the nature of its educational program, its financial charges or the employability of its graduates.

(b) The following definitions apply to this subpart:

Misrepresentation: Any false, erroneous or misleading statement an eligible institution makes to a student enrolled at the institution, to any prospective student, to the family of an enrolled or prospective student, or to the Secretary. Misrepresentation includes the dissemination of endorsements and testimonials that are given under duress.

Prospective student: Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through general advertising about enrolling at the institution.

Substantial misrepresentation: Any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

(Authority: 20 U.S.C. 1094)

§ 668.72 Nature of educational program.

Misrepresentation by an institution of the nature of its educational program includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) The particular type(s), specific source(s), nature and extent of its accreditation;

(b) Whether a student may transfer course credits earned at the institution to any other institution;

(c) Whether successful completion of a course of instruction qualifies a student for—

(1) Acceptance into a labor union or similar organization; or

(2) Receipt of a local, State or Federal license or a non-governmental certification required as a precondition for employment or to perform certain functions;

(d) Whether its courses are recommended by—

(1) Vocational counselors, high schools or employment agencies; or

(2) Governmental officials for governmental employment;

(e) Its size, location, facilities or equipment;

(f) The availability, frequency and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;

(g) The nature, age and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;

(h) The number, availability and qualifications, including the training and experience, of its faculty and other personnel;

(i) The availability of part-time employment or other forms of financial assistance;

(j) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course;

(k) The nature of extent of any prerequisites established for enrollment in any course; or

(l) Any matters required to be disclosed to prospective students under § 668.44 of this part.

(Authority: 20 U.S.C. 1094)

[51 FR 43324, Dec. 1, 1986, as amended at 54 FR 24118, June 5, 1989]

§ 668.73 Nature of financial charges.

Misrepresentation by an institution of the nature of its financial charges includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge, unless a scholarship is actually used to reduce tuition charges made known to the student in advance. The charges made known to the student in advance are the charges applied to all students not receiving a scholarship; or

(b) Whether a particular charge is the customary charge at the institution for a course.

(Authority: 20 U.S.C. 1094)

§ 668.74 Employability of graduates.

Misrepresentation by an institution regarding the employability of its graduates includes, but is not limited to, false, erroneous or misleading statements—

(a) That the institution is connected with any organization or is an employment agency or other agency providing authorized training leading directly to employment.

(b) That the institution maintains a placement service for graduates or will otherwise secure or assist its graduates to obtain employment, unless it provides the student with a clear and accurate description of the extent and nature of this service or assistance; or

(c) Concerning government job market statistics in relation to the potential placement of its graduates.

(Authority: 20 U.S.C. 1094)

§ 668.75 Procedures.

(a) On receipt of a written allegation or compliant from a student enrolled at the institution, a prospective student, the family of a student or prospective student, or a governmental official, the designated department official as defined in § 688.81 reviews the allegation or compliant to determine its factual base and seriousness.

(b) If the misrepresentation is minor and can be readily corrected, the designated department official informs the institution and endeavors to obtain an informal, voluntary correction.

(c) If the designated department official finds that the complaint or allegation is a substantial misrepresentation as to the nature of the educational programs, the financial charges of the institution or the employability of its graduates, the official—

(1) Initiates action to fine or to limit, suspend or terminate the institution's

eligibility to participate in the Title IV, HEA programs according to the procedures set forth in Subpart G, or

(2) Take other appropriate action.

Authority: 20 U.S.C. 1094)

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

Source: 51 FR 43325, Dec. 1, 1986, unless otherwise noted.

668.81 Scope and special definitions.

(a)(1) This subpart establishes rules or the imposition of a fine upon, or or the suspension, limitation or termiation of an otherwise eligible instituion's participation in any or all of the Title IV, HEA programs.

(2) An "otherwise eligible instituion" is an institution that the Secreary has determined—

(i) Satisfies the appropriate definiion of the term "public or private nonprofit institution of higher educaion," "proprietary institution of higher education," "postsecondary voational institution" or "vocational chool" set forth in Subpart A of this art; and

(ii) Initially satisfies the factors of inancial responsibility and standards f administrative capability set forth n Subpart B of this part.

(b) This subpart applies to an instiution which violates any Title IV, HEA program statute, regulation, speial arrangement, agreement or limitaion prescribed under authority of Title IV of the HEA;

(c) This subpart does not apply to a etermination that—

(1) An institution of higher educaion fails at any time to meet the stattory definition set forth in section 35, 481 or 1201 of the HEA;

(2) A vocational school fails at any ime to meet the statutory definition et forth in section 435(c) of the HEA; r

(3) An institution fails to qualify for nitial certification to participate in ny Title IV, HEA program because it oes not meet the fiscal and adminisrative standards set forth in Subpart of this part.

(d) This subpart does not apply to a etermination by the Secretary of the system to be used to disburse Title IV, HEA program funds to an institution (*i.e.*, advance payments and payments by way of reimbursements) participating under any Title IV, HEA program.

(e) This subpart does not apply to administrative action by the Department of Education based on any alleged violation of—

Subject	Statute	Regulation
Discrimination on the basis of race, color, or natural origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4).	34 CFR Part 100.
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	34 CFR Part 106.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 794).	34 CFR Part 104.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	45 CFR Part 90.

(f) The following definitions apply to this subpart:

Designated department official: An official of the Education Department to whom the Secretary has delegated responsibilities indicated in this subpart.

Funds: Any money, commitments to provide money and commitments of insurance or reinsurance provided under any or all Title IV, HEA programs to an institution or to or on behalf of students enrolled and attending an institution.

(Authority: 20 U.S.C. 1094)

§ 668.82 Standard of conduct.

(a) A participating institution acts in the nature of a fiduciary in its administration of the Title IV, HEA programs.

(b) In the capacity of a fiduciary, the institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs.

(c) An institution's failure to administer the Title IV, HEA programs, or to account for the funds it receives under those programs, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for a fine, or the suspension, limitation or termination of the eligibility of the institution to participate in those programs.

(d)(1) An institution violates its fiduciary duty if—

(i) The institution, its owner, or its chief executive officer has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or has been judicially determined to have committed fraud involving Federal funds;

(ii) The institution employs an individual in a capacity that involves the administration of Title IV, HEA programs or the receipt of Title IV, HEA program funds who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or who has been judicially determined to have committed fraud involving Federal funds; or

(iii) The institution uses any individual, agency, or organization that has been, or whose officers or employees have been—

(A) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds; or

(B) Judicially determined to have committed fraud involving Federal funds.

(2) A violation for a reason contained in paragraph (d)(1) of this section of an institution's fiduciary duty is an automatic ground for terminating the institution's eligibility to participate in any Title IV, HEA program.

(e)(1) The debarment of a participating institution under Executive Order (E.O.) 12549 by ED or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554-557, terminates the institution's eligibility to participate in the Title IV, HEA programs for the duration of the debarment.

(2)(i) The suspension of a participating institution under E.O. 12549 by ED or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554-557, suspends the institution's eligibility to participate in the Title IV, HEA programs.

(ii) The suspension of Title IV eligibility lasts for a period of 60 days, beginning on the date of the suspending official's decision, except that it may last longer if the institution and the Secretary agree to an extension or if the Secretary initiates a limitation or termination proceeding against the institution under 34 CFR Part 668, Subpart G, prior to the 60th day.

(3)(i) The Secretary conducts an audit or program review of any lender that is debarred or suspended by ED or another Federal agency, to determine whether grounds exist for the initiation of a fine, limitation, suspension, or termination action against the lender under 34 CFR Part 668, Subpart G.

(ii) The Secretary initiates a fine, limitation, suspension, or termination action under 34 CFR Part 668, Subpart G, against an educational institution that is suspended or debarred under E.O. 12549 by ED or another Federal agency if the procedures used did not comply with 5 U.S.C. 554-557.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

[51 FR 43325, Dec. 1, 1986, as amended at 52 FR 45734, Dec. 1, 1987; 53 FR 19193, May 26, 1988]

§ 668.83 Emergency action.

(a) *Scope and consequences.* The Secretary, may take an emergency action against an institution under which the Secretary withholds funds from the institution or its students and withdraws the authority of the institution to obligate funds under any or all Title IV, HEA programs if the Secretary—

(1) Receives information, determined by the official to be reliable that the institution is violating applicable laws, regulations, special arrangements, agreements or limitations.

(2) Determines that immediate action is necessary to prevent misuse of Federal funds; and

(3) Determines that the likelihood of loss outweights the importance of following the procedures set forth in this

subpart for suspension, limitation or termination.

(b) *Procedures.* A designated department official begins an emergency action by notifying the institution, by certified mail with return receipt requested, of the emergency action and the basis on which the action is taken. The notice also states that the institution has an opportunity to show cause that the emergency action is unwarranted. The effective date of the action is the date on which the notice is received by the institution.

(c) *Duration.* An emergency action may not exceed 30 days unless a suspension, limitation or termination proceeding is begun under this subpart before the expiration of that period. In such case, the period may be extended until the completion of that proceeding, including any appeal to the Secretary.

(d) *Opportunity to show cause.* The Secretary provides the institution, if it so requests, an opportunity to show cause that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1094)

§ 668.84 Fine proceedings.

(a) *Scope and consequences.* The Secretary may impose a fine of up to $25,000 per violation on an institution that—

(1) Violates any provision of Title IV of the HEA or any regulation or agreement implementing that title; or

(2) Substantially misrepresents the nature of its educational program, its financial charges or the employability of its graduates.

(b) *Procedures.* (1) A designated department official begins a fine proceeding by sending the institution a notice by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the Secretary's intent to fine the institution and the amount of the fine and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the fine, which must be at least 20 days from mailing of the notice of intent;

(iii) Inform the institution that the fine will not be effective on the date specified in the notice if the designated department official receives by that date, a written request for a hearing or written material indicating why the fine should not be imposed.

(2) If the institution does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The fine will not be imposed; or

(ii) The fine is imposed as of a specified date, and in a specified amount.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request.

(4) An administrative law judge conducts a hearing on the record in accordance with § 668.88.

(c) *Expedited hearings.* With the approval of the administrative law judge and the consent of the designated department official and the institution, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

§ 668.85 Suspension proceedings.

(a)(1) *Scope and consequences.* The Secretary may suspend the eligibility of an institution to participate in any or all of the Title IV, HEA programs if the institution violates any provision of Title IV of the HEA or any provision of any regulation or agreement implementing that Title.

(2) The suspension may not exceed 60 days unless—

(i) The institution and the Secretary agree to an extension if the institution has not requested a hearing; or

(ii) The designated department official begins a limitation or termination proceeding under § 668.86.

(b) *Procedures.* (1) A designated department official begins a suspension proceeding by sending a notice to an institution by certified mail with return receipt requested. The notice must—

(i) Inform the institution of the intent of the Secretary to suspend the institution's eligibility to participate, cite the consequences of that action and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the suspension, which shall be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the suspension will not be effective on the date specified in the notice if the designated department official receives by that date, a request for a hearing or written material indicating why the suspension should not take place.

(2) If the institution does not request a hearing, but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. No suspension takes place until after a hearing is held.

(4) An administrative law judge conducts a hearing on the record in accordance with § 668.88.

(Authority: 20 U.S.C. 1094)

§ 668.86 Limitation or termination proceedings.

(a) *Scope and consequences.* The Secretary may terminate or limit the eligibility of an institution to participate in any or all Title IV, HEA programs if the institution violates any provision of Title IV of the HEA or any regulation or agreement implementing that Title. The consequences of the Secretary limiting or terminating the eligibility of an institution to participate in any Title IV, HEA program are set forth in §§ 668.93 and 668.94, respectively.

(b) *Procedures.* (1) A designated department official begins a limitation or termination proceeding by sending an institution a notice by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the intent of the Secretary to limit or terminate the institution's eligibility to participate, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action, and, in the case of a limitation proceeding, state the limits to be imposed;

(ii) Specify the proposed effective date of the limitation or termination, which must be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives by that date, a request for a hearing or written material indicating why the limitation or termination should not take place.

(2) If the institution does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. No limitation or termination takes place until after a hearing is held.

(4) An administrative law judge conducts a hearing on the record in accordance with § 668.88.

(c) *Expedited hearing.* With the approval of the administrative law judge and the consent of the designated department official and the institution, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

§ 668.87 Pre-hearing conference.

(a)(1) A pre-hearing conference be convened by the administrative law judge if he or she thinks that such a conference would be useful, or if requested by—

(i) The designated department official; or

(ii) The institution.

(2) The purpose of a pre-hearing conference is to allow the parties to settle or narrow the dispute.

(b) If agreed to by the administrative law judge, the designated department official and the institution, a pre-hearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1094)

§ 668.88 Hearing on the record.

(a) A hearing on the record is an orderly presentation of arguments and evidence conducted by an administrative law judge.

(b) The hearing process may be expedited as agreed by the administrative law judge, the designated department official and the institution. Procedures to expedite may include, but are not limited to, the following—

(1) A restriction on the number or length of submissions;

(2) The conduct of the hearing by telephone conference call;

(3) A review limited to the written record; or

(4) A certification by the parties to facts and legal authorities not in dispute.

(c)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable. However, discussions of settlement between the parties or the terms of settlement offers are not admissible.

(2) The designated department official has the burden of persuasion in any fine, suspension, limitation or termination proceeding under this subpart.

(3) Discovery, as provided for under the Federal Rules of Civil Procedure, is not permitted.

(4) The administrative law judge accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.

(d) The designated department official shall make a transcribed record of the proceeding and shall make the record available to the institution upon its request and upon its payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR Part 5).

(Authority: 20 U.S.C. 1094)

§ 668.89 Authority and responsibilities of the administrtive law judge.

(a) The administrative law judge regulates the course of the proceeding and conduct of the parties during the hearing and takes all steps necessary to conduct a fair and impartial proceeding.

(b)(1) The administrative law judge is not authorized to issue subpoenas.

(2) If requested by the administrative law judge, the Secretary and the institution shall provide available personnel who have knowledge about the matter under review for oral or written examination.

(c) The administrative law judge shall take whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to, the following—

(1) Scheduling of conferences;

(2) Setting time limits for hearings and submission of written documents; and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(Authority: 20 U.S.C. 1094)

§ 668.90 Initial and final decisions—Appeals.

(a)(1) The administrative law judge shall issue a written initial decision to the institution and the designated department official by certified mail, return receipt requested, within 30 days after—

(i) The last brief is filed;

(ii) The last day of the hearing, if the administrative law judge does not request the parties to submit briefs; or

(iii) The date on which the administrative law judge terminates the hearing in accordance with § 668.89(c)(3).

(2) The administrative law judge's decision must state whether the imposition of the fine, limitation, suspension or termination sought by the designated department official is warranted, in whole or in part. If the designated department official brought a ter-

mination action against the institution, the administrative law judge may, if appropriate, issue a decision to fine the institution or impose one or more limitations on the institution rather than terminating its eligibility to participate.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section—

(i) If, in a termination action against an institution, the administrative law judge finds that the owner of the institution, the institution itself or the chief executive officer of the institution was convicted of, or pled guilty to, a crime involving the unlawful acquisition, use, or expenditure of Title IV, HEA program funds, the administrative law judge must find that termination of the institution's eligibility to participate in the Title IV, HEA programs is warranted; or

(ii) If the action brought against an institution involves its failure to provide a letter of credit or performance bond in the amount specified by the Secretary under § 668.13, the administrative law judge must find that the amount of the performance bond or letter of credit established by the Secretary was appropriate unless the institution can demonstrate that the amount was unreasonable.

(iii) In a limitation, suspension or termination proceeding commenced on the grounds described in § 668.15(b)(1) of this part, if the administrative law judge finds that the institution's GSL and SLS fiscal year default rate, as defined in § 668.15(f) of this part, meets the conditions specified in § 668.15(b)(1) of this part for initiation of limitation, suspension, or termination proceedings, the administrative law judge shall find that the sanction sought by the designated Department official is warranted, except that the administrative law judge shall find that no sanction is warranted if the institution demonstrates that it has acted diligently to implement the default reduction measures described in Appendix D to this part.

(4) The administrative law judge shall base findings of fact only on evidence considered at the hearing and on matters given judicial notice. If a hearing is conducted by written submissions, findings of fact must be agreed to by the parties.

(b)(1) In a suspension proceeding, the Secretary reviews the administrative law judge's initial decision and issues a final decision within 20 days after the initial decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence presented at the hearing.

(2) A suspension takes effect upon either the date on which notice of the suspension is received by the institution or the original proposed effective date stated in the designated department official's notice of intent to suspend, whichever is later.

(3) A suspension may not exceed 60 days unless a limitation or termination proceeding is begun under this subpart before the expiration of that period. In that case, the period may be extended until the completion of that proceeding including any appeal to the Secretary.

(c)(1) In a fine, limitation or termination proceeding, the administrative law judge's initial decision automatically becomes the Secretary's final decision 20 day after it is issued and received by both parties unless, within that 20 days period, the institution or the designated department official appeals the decision to the Secretary.

(2) An appeal is made by sending a written notice of appeal to the Secretary. This notice must be received by the Secretary within twenty days of the appealing party's receipt of the administrative law judge's initial decision. (The appealing party shall send a copy of its appeal notice to the other party.)

(d)(1) Within a period specified by the Secretary, the party that appeals shall submit a brief or written materials to the Secretary explaining why the initial decision of the administrative law judge should be overturned or modified.

(2) The appealing p[illegible] may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(i) The evidence introduced into the record at hearing;

(ii) Stipulations of the parties if the hearing consisted of written submissions; or

(iii) Matters that may be judicially noticed.

(3) The opposing party shall respond within the time period specified by the Secretary.

(4) Neither party may introduce new evidence on appeal.

(5) Each party shall provide a copy of its brief to the other party when it submits its brief to the Secretary.

(e) The initial decision of the administrative law judge imposing a fine or limiting or terminating the eligibility of the institution to participate does not take effect pending the appeal.

(*f*)(1) The Secretary renders a final decision.

(2) In rendering that decision, the Secretary considers only evidence introduced into the record at the hearing and facts agreed to by the parties if the hearing consisted of only written submissions and matters that may be judicially noticed.

(3) The Secretary's decision may affirm, modify or reverse the administrative law judge's initial decsion and ncludes a statement of the reasons for the decision, except that if the adminstrative law judge finds that the termination is warranted pursuant to § 668.90 (a)(3)(i), the Secretary affirms hat decision.

Approved by the Office of Management nd Budget under control number 1840-537)

Authority: 20 U.S.C. 1082, 1094)

51 FR 43325, Dec. 1, 1986, as amended at 52 R 45735, Dec. 1, 1987; 54 FR 24118, June 5, 989; 54 FR 35189, Aug. 24, 1989]

668.91 Verification of mailing and receipt dates.

(a) Verification of the Department f Education's mailing dates and reeipt dates referred to in this subpart evidenced by the original receipt rom the U.S. Postal Service.

(b) If an institution refuses to accept notice mailed under this subpart, the ecretary considers the notice as being eceived on the date that the institution refuses to accept the notice.

uthority: 20 U.S.C. 1094)

§ 668.92 Fines.

(a) In determining the amount of a fine, the designated department official, administrative law judge and Secretary shall take into account—

(1)(i) The gravity of the institution's violation or failure to carry out the relevant statute, regulation or agreement; or

(ii) The gravity of its misrepresentation; and

(2) The size of the institution.

(b) Upon the request of the institution, the Secretary may compromise the fine.

(Authority: 20 U.S.C. 1094)

§ 668.93 Limitation.

A limitation may include, as appropriate to the program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive Title IV, HEA program funds;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from Title IV, HEA program funds;

(c) A requirement that an institution obtain a bond, in a specified amount, to assure its ability to meet its financial obligations to students who receive Title IV, HEA program funds; or

(d) Other conditions as may be determined by the Secretary to be reasonable and appropriate.

(Authority: 20 U.S.C. 1094)

§ 668.94 Termination.

(a) A termination—

(1) Ends an institution's eligibility to participate in any or all of the Title IV, HEA programs;

(2) Prohibits an institution or the Secretary from making or increasing Title IV, HEA program awards;

(3) Prohibits an institution from making any other new obligations against Title IV, HEA program funds; and

(4) Prohibits further guarantee commitments by the Secretary under the Guaranteed Student Loan or PLUS programs for loans to students to attend that institution, and prohibits further disbursements by an institu-

tion which is a lender under the Guaranteed Student Loan or PLUS programs (whether or not guarantee commitments have been issued by the Secretary or a guarantee agency for such disbursements):

(b) If an institution is terminated during a payment period, any student at the institution who has received an award or to whom a commitment has been made before the effective date of the termination may receive a payment for that payment period.

(c) For purposes of this section, a commitment—

(1) Under the Pell Grant and Campus-based programs, is defined in § 668.25 and

(2) Under the Guaranteed Student Loan and PLUS programs, occurs when the Secretary or a guarantee agency advises the lender that the loan will be guaranteed.

(Authority: 20 U.S.C. 1094)

§ 668.95 Reimbursements, refunds and offsets.

(a) The designated department official, administrative law judge or Secretary may require an institution to take reasonable and appropriate corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements or limitations.

(b) The corrective action may include payment of any funds to the Secretary, or to designated recipients, which the institution improperly received, withheld, disbursed or caused to be disbursed. Corrective action may, for example, relate to—

(1) With respect to the Guaranteed Student Loan or PLUS programs—

(i) Ineligible interest benefits, special allowances or other claims paid by the Secretary; and

(ii) Discounts, premiums or excess interest paid in violations of Part 682 or 683 of Title 34 of the Code of Federal Regulations; and

(2) With respect to all Title IV, HEA programs—

(i) Refunds due to students under program regulations; and

(ii) Any grants, work-study assistance or loans made in violation of program regulations.

(c) If any final decision requires an institution to reimburse or make any other payment to the Secretary, the Secretary may offset these claims against any benefits or claims due to the institution.

(Authority: 20 U.S.C. 1094)

§ 668.96 Reinstatement after termination.

(a)(1) An institution whose eligibility to participate in any or all of the Title IV, HEA programs has been terminated may file a request for reinstatement as a participating eligible institution.

(2) Except for an institution that has been terminated for engaging in substantial misrepresentation concerning the nature of its educational program, the nature of its financial charges or the employability of its graduates, a request for reinstatement may not be made before the expiration of 18 months after the effective date of the termination.

(3) An institution whose eligibility to participate was terminated because the institution engaged in substantial misrepresentation may not request reinstatement before the expiration of three months after the effective date of the termination.

(b) In order to be reinstated, an institution must—

(1) Demonstrate to the Secretary's satisfaction that it has corrected the violation(s) on which its termination was based, including payment in full to the Secretary or to other recipients of funds that the institution has improperly received, withheld, disbursed or caused to be disbursed;

(2) Meet all the requirements for participation included in Subpart B; and

(3) Enter into a new participation agreement with the Secretary.

(c) The Secretary, within 60 days of receiving the reinstatement request—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitation(s).

(Approved by the Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094)

[52 FR 45735, Dec. 1, 1987; 53 FR 49147, Dec. 6, 1988]

§ 668.97 Removal of limitation.

(a) An institution whose eligibility to participate in any or all Title IV, HEA programs has been limited may not apply for removal of the limitation of its eligibility to participate before the expiration of 12 months from the effective date of the limitation.

(b) After the minimum limitation period, the institution may request removal of the limitation. The request must be in writing and show that the institution has corrected the violations on which the limitation was based.

(c) No later than 60 days after the receipt of the request, the Secretary responds to the institution—

(1) Granting its request;

(2) Denying its request; or

(3) Granting the request subject to other limitation(s).

(d) If the Secretary denies the request or establishes other limitation(s), the institution, upon request, is granted an opportunity to show cause why its eligibility to participate should be fully reinstated.

(e) The institution's request for a show cause meeting does not waive its right to participate in any or all Title IV, HEA programs if it complies with the continuing limitation(s) pending the outcome of the meeting.

(Authority: 20 U.S.C. 1094)

Subpart H—Appeal Procedures for Audit Determinations and Program Review Determinations

SOURCE: 52 FR 30115, Aug. 12, 1987, correctly designated at 52 FR 46354, Dec. 7, 1987, unless otherwise noted.

§ 668.111 Scope and purpose.

(a) This subpart establishes rules governing the appeal of an institution from a final audit determination or a final program review determination arising from an audit or program review of the institution's participation in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). (The Title IV, HEA programs are listed in § 668.1(c)).

(b) This subpart applies to any institution (as defined in § 668.1(b)) that appeals a final audit determination or final program review determination.

(c) This subpart does not apply to proceedings governed by Subpart G of this part or to a determination that—

(1) An institution fails to meet the applicable statutory definition set forth in sections 435, 481, or 1201 of the HEA, except to the extent that such a determination forms the basis of a final audit determination or a final program review determination; or

(2) An institution fails to qualify for certification to participate in the Title IV, HEA programs because it does not meet the fiscal and administrative standards set forth in Subpart B of this part, except to the extent that such a determination forms the basis of a final audit determination or a program review determination.

(Authority: 20 U.S.C. 1094)

§ 668.112 Definitions.

As used in this subpart:

"Designated ED official" means an official of the Education Department to whom the Secretary has delegated the responsibilities referred to in this subpart.

"Final audit determination" means the written notice of a determination issued by a designated ED official based on an audit of an institution's participation in any or all of the Title IV, HEA programs covered under this subpart.

"Final program review determination" means the written notice of a determination issued by a designated ED official and resulting from a program compliance review of an institution's participation in any or all of the Title IV, HEA programs covered under this subpart.

(Authority: 20 U.S.C. 1094)

§ 668.113 Request for review.

(a) An institution seeking the Secretary's review of a final audit determination or a final program review determination shall file a written request for review with the designated ED official issuing the final audit determination or final program review determination.

(b) The institution shall file its request for review and any records or materials admissible under the terms of §§ 668.116 (e) and (f) of this subpart, no later than 45 days from the date it receives the final audit determination or final program review determination.

(c) The institution shall attach to the request for review a copy of the final audit determination or final program review determination, and shall—

(1) Identify the issues and facts in dispute; and

(2) State the institution's position together with the pertinent facts and reasons supporting that position.

(Approved by OMB under Control Number 1840-0592)

(Authority: 20 U.S.C. 1094)

[52 FR 30115, Aug. 12, 1987; 52 FR 46354, Dec. 7, 1987]

§ 668.114 Notification of hearing.

(a) Upon receipt of an institution's request for review, the designated ED official arranges for a hearing on the record before an administrative law judge.

(b) Within 30 days of the designated ED official's receipt of an institution's request for review, the administrative law judge establishes a schedule for the submission of briefs by both the institution and the designated ED official.

(c) The submission of briefs and of accompanying evidence admissible under the terms of §§ 668.116 (e) and (f) shall be scheduled to occur no later than 120 days from the date upon which the administrative law judge notifies the institution under paragraph (b) of this section.

(Authority: 20 U.S.C. 1094)

[52 FR 30115, Aug. 12, 1987; 52 FR 32868, Aug. 31, 1987; 52 FR 46354, Dec. 7, 1987]

§ 668.115 Prehearing conference.

(a) In the event that the administrative law judge considers a prehearing conference necessary, he may convene a prehearing conference.

(b) The purpose of a prehearing conference is to allow the parties to settle or narrow the dispute. A prehearing conference consists of—

(1) A telephone conference call;

(2) An informal meeting of the parties with the administrative law judge; or

(3) The submission and exchange of written materials by the parties.

(c) All prehearing conferences requiring appearances by the parties shall take place in the Washington, D.C. metropolitan area.

(Authority: 20 U.S.C. 1094)

§ 668.116 Hearing on the record.

(a) A hearing on the record is a process conducted by the administrative law judge whereby an orderly presentation of arguments and evidence is made by the parties.

(b) The hearing process consists of the submission of written briefs to the administrative law judge by the institution and by the designated ED official, unless the administrative law judge determines, under paragraph (g) of this section, that an oral hearing is also necessary.

(c) Each party shall provide a copy of its brief and any accompanying materials to the opposing party simultaneously with the filing of its brief and materials with the administrative law judge.

(d) An institution requesting review of the final audit determination or final program review determination issued by the designated ED official shall have the burden of proving the following matters, as applicable—

(1) That expenditures questioned or disallowed were proper;

(2) That the institution complied with program requirements.

(e)(1) A party may submit as evidence to the administrative law judge only materials within one or more of the following categories:

(i) ED audit reports and audit work papers for audits performed by the United States Education Department Office of Inspector General.

(ii) Institutional audit work papers, records, and other materials, if the institution provide those work papers, records, or materials to ED no later than the date by which it was required to file its request for review in accordance with § 668.113.

(iii) ED program review reports and work papers for program reviews.

(iv) Institutional records and other materials provided to ED in response to a program review, if the records or materials were provided to ED by the institution no later than the date by which it was required to file its request for review in accordance with §668.113.

(v) Other ED records and materials if the records and materials were provided to the administrative law judge no later than 30 days after the institution's filing of its request for review.

(2) A party desiring to submit as evidence any materials described in paragraph (e)(1) of this section shall submit that evidence with its initial brief.

(f) The administrative law judge shall accept only evidence that is both admissible and timely under the terms of paragraph (e) of this section, and relevant and material to the appeal. Examples of evidence which shall be deemed irrelevant and immaterial except upon a clear showing of probative value respecting the matters described in paragraph (d) include—

(1) Evidence relating to a period of time other than the period of time covered by the audit or program review;

(2) Evidence relating to an audit or program review of an institution other than the institution bringing the appeal, or the resolution thereof; and

(3) Evidence relating to the current practice of the institution bringing the appeal in the program areas at issue in the appeal.

(g)(1) The administrative law judge may schedule an oral argument if he determines that an oral argument is necessary to clarify the issues and the positions of the parties as presented in the parties' written submissions.

(2) In the event that an oral argument is conducted, the designated ED official shall make a transcribed record of the proceedings and shall make that record available to the institution upon its request and upon its payment of a fee consistent with that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR Part 5).

(h) Any oral argument shall take place in the Washington, D.C. metropolitan area.

(i) Either party may be represented by counsel.

(Authority: 20 U.S.C. 1094)

[52 FR 30115, Aug. 12, 1987; 52 FR 32868, Aug. 31, 1987; 52 FR 46354, Dec. 7, 1987]

§ 668.117 Authority and responsibilities of the administrative law judge.

(a) The administrative law judge regulates the course of the proceedings and the conduct of the parties following a request for review and takes all steps necessary to conduct fair and impartial proceedings.

(b) The administrative law judge is not authorized to issue subpoenas or compel discovery as provided for in the Federal Rules of Civil Procedure.

(c) The administrative law judge shall take whatever measures are appropriate to expedite the proceedings. These measures may include, but are not limited to, one or more of the following:

(1) Scheduling of conferences.

(2) Setting time limits for oral arguments and the submission of briefs.

(3) Terminating the hearing process and issuing a decision against a party if that party does not meet time limits established by the administrative law judge.

(d) The administrative law judge is bound by all applicable statutes and regulations. The administrative law judge may not—

(1) Waive applicable statutes and regulations; or

(2) Rule them invalid.

(Authority: 20 U.S.C. 1094)

§ 668.118 Decision of the administrative law judge.

(a) Upon review of the parties' written submissions and termination of the oral argument if one is held, the administrative law judge issues a written decision.

(b) The administrative law judge's decision states and explains whether the final audit determination or final program review determination issued by the designated ED official was supportable, in whole or in part.

(c) The administrative law judge bases any findings of fact only on evidence properly presented before him, on matters given official notice, or on facts stipulated to by the parties.

(Authority: 20 U.S.C. 1094)

§ 668.119 Appeal to the Secretary.

(a) Within 15 days of its receipt of the initial decision of the administrative law judge, a party wishing to appeal the decision shall submit a brief or other written material to the Secretary explaining why the decision of the administrative law judge should be overturned or modified.

(b) The party appealing the initial decision shall, simultaneously with its filing of the appeal, provide the opposing party with a copy of its brief or other written material.

(c) In its brief to the Secretary, the party appealing the initial decision may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(1) The admissible evidence already in the record;

(2) Matters that may be given official notice; or

(3) Stipulations of the parties

(d) The opposing party shall file its response to the appeal, if any, with the Secretary within 15 days of that party's receipt of the appeal to the Secretary.

(e) The opposing party shall, simultaneously with the filing of any response, provide a copy of its response to the appeal to the party appealing the initial decision.

(f) Neither party may introduce new evidence on appeal.

(Authority: 20 U.S.C. 1094)

§ 668.120 Decision of the Secretary.

(a) Following an appeal from the administrative law judge's initial decision, the Secretary issues a decision that affirms or, for good cause shown, modifies, remands, or overturns the initial decision of the administrative law judge.

(b) If the Secretary modifies, remands, or overturns the initial decision of the administrative law judge, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action;

(2) Is provided to both parties; and

(3) Unless the decision is remanded to the administrative law judge for further review or determination of fact, becomes final upon its issuance.

(Authority: 20 U.S.C. 1094)

§ 668.121 Final decision of the Department.

(a) In the event that the initial decision of the administrative law judge is appealed, the decision of the Secretary is the final decision of the Department, unless the administrative law judge's decision is remanded by the Secretary.

(b) In the event that the initial decision of the administrative law judge is not appealed within the time limit specified in § 668.119(a), the initial decision automatically becomes the final decision of the Department.

(Authority: 20 U.S.C. 1094)

[52 FR 30115, Aug. 12, 1987; 52 FR 46354, Dec. 7, 1987]

§ 668.122 Determination of filing, receipt, and submission dates.

(a) The request for review, appeals, and other written submissions referred to in this subpart may be either hand-delivered or mailed.

(b) All mailed written submissions referred to in this subpart shall be mailed by certified mail, return receipt requested.

(c) Determination of filing, receipt, or submission dates shall be based on either the date of hand-delivery or the date of receipt indicated on the original U.S. Postal Service return receipt.

(Authority: 20 U.S.C. 1094)

§ 668.123 Collection.

To the extent that the decision of the Secretary sustains the final audit determination or final program review determination, ED will take steps to collect the debt at issue or otherwise effect the determination that was the subject of the request for review.

(Authority: 20 U.S.C. 1094)

APPENDIX A TO PART 668—TRACK RECORD DISCLOSURE FORMS

This appendix provides forms for institutions to use to disclose to prospective students the information required by 34 CFR 668.44(c)(1)(ii) through (iv). The use of these forms is required by 34 CFR 668.44(f).

An institution shall use Form I in connection with a program offered for a vocational, trade, or career occupation for which there exists a State licensure or certification examination required by the State for employment in the occupation. For all other programs for which disclosures under 34 CFR 668.44(c) (2) through (4) are required, the institution shall use Form II.

Form I:

HOW OUR STUDENTS ARE DOING

To help you make a good decision about whether to sign up for (name of program), (name of institution) wants you to know that, according to the latest information--

_____%, or ___ of the _____ students in this program scheduled to graduate in (year) went on to graduate;

*_____%, or __ of the ____ students scheduled to graduate in that year have found jobs in (name of occupation or field for which training is offered); and

_____%, or __ of the ______ students in this program taking the (name of test) administered by the State of (name of State in which the program is being offered to the student) in (year) passed that examination.

I have read and understood the graduation rate, licensing or certification examination pass rate, and job placement rate information provided above.

_____________ (Prospective student's signature)

Date

*We have been told by ____ of the students that were scheduled to graduate in that year that, even though they graduated, they decided not to look for a job in that occupation. Also, ____ of the students scheduled to graduate in that year have not responded to our job placement questionnaire, so we do not know whether they have found jobs or not.

Form II:

HOW OUR STUDENTS ARE DOING

To help you make a good decision about whether to sign up for (name of program), (name of institution) wants you to know that, according to the latest information--

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_____%, or ___ of the _____ students in this program scheduled to graduate in (year) went on to graduate; and

*_____%, or __ of the ____ students scheduled to graduate in that year have found jobs in (name of occupation or field for which training is offered).

I have read and understood the graduation rate and job placement rate information provided above.

_____________ (Prospective student's signature)

Date

* We have been told by ____ of the students scheduled to graduate in that year that, even though they graduated, they decided not to look for a job in that occupation. Also, ____ of the students scheduled to graduate in that year have not responded to our job placement questionnaire, so we do not know whether they have found jobs or not.

[54 FR 24118, June 5, 1989, as amended at 54 FR 37267, Sept. 7, 1989]

APPENDIX B TO PART 668—STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES, AND FUNCTIONS (GAO)

Part III Chapter 3—Independence

(a) The Third general standard for governmental auditing is: In matters relating to the audit work, the audit organization and the individual auditors shall maintain an independent attitude.

(b) This standard places upon the auditor and the audit organization the responsibility for maintaining sufficient independence so that their opinions, conclusions, judgments, and recommendations will be impartial. If the auditor is not sufficiently independent to produce unbiased opinions, conclusions, and judgments, he should state in a prominent place in the audit report his relationship with the organization or officials being audited.[1]

(c) The auditor should consider not only whether his or her own attitude and beliefs permit him or her to be independent but also whether there is anything about his or her situation which would lead others to question his or her independence. Both situations deserve consideration since it is important not only that the auditor be, in fact, independent and impartial but also that other persons will consider him or her so.

(d) There are three general classes of impairments that the auditor needs to consider; these are personal, external, and organizational impairments. If one or more of these are of such significance as to affect the auditor's ability to perform his or her work and report its results impartially, he or she should decline to perform the audit or indicate in the report that he or she was not fully independent.

Personal Impairments

There are some circumstances in which an auditor cannot be impartial because of his or her views or his or her personal situation. These circumstances might include:

1. Relationships of an official, professional, and/or personal nature that might cause the auditor to limit the extent or character of the inquiry, to limit disclosure, or to weaken his or her findings in any way.

2. Preconceived ideas about the objectives or quality of a particular operation or personal likes or dislikes of individuals, groups, or objectives of a particular program.

3. Previous involvement in a decisionmaking or management capacity in the operations of the governmental entity or program being audited.

4. Biases and prejudices, including those induced by political or social convictions, which result from employment in or loyalty to a particular group, entity, or level of government.

5. Actual or potential restrictive influence when the auditor performs preaudit work and subsequently performs a post audit.

6. Financial interest, direct or indirect, in an organization or facility which is benefiting from the audited programs.

External Impairments

External factors can restrict the audit or impinge on the auditor's ability to form independent and objective opinions and conclusions. For example, under the following conditions either the audit itself could be adversely affected or the auditor would not have complete freedom to make an independent judgment.[2]

1. Interference or other influence that improperly or imprudently eliminates, restricts, or modifies the scope or character of the audit.

2. Interference with the selection or application of audit procedures of the selection of activities to be examined.

3. Denial of access to such sources of information as books, records, and supporting documents or denial or opportunity to obtain explanations by officials and employees of the governmental organization, program, or activity under audit.

4. Interference in the assignment of personnel to the audit task.

5. Retaliatory restrictions placed on funds or other resources dedicated to the audit operation.

6. Activity to overrule or significantly influence the auditors judgment as to the appropriate content of the audit report.

7. Influences that place the auditor's continued employment in jeopardy for reasons other than competency or the need for audit services.

8. Unreasonable restriction on the time allowed to competently complete an audit assignment.

Organizational Impairments

(a) The auditor's independence can be affected by his or her place within the organizational structure of governments. Auditors employed by Federal, State, or local government units may be subject to policy direction from superiors who are involved either directly or indirectly in the government management process. To achieve maximum independence such auditors and the audit organization itself not only should report to the highest practicable echelon within their government but should be organizationally located outside the line-management function of the entity under audit.

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[1] If the auditor is not fully independent because he or she is an employee of the audited entity, it will be adequate disclosure to so indicate. If the auditor is a practicing certified public accountant, his or her conduct should be governed by the AICPA "Statements on Auditing Procedure."

[2] Some of these situations may constitute justifiable limitations on the scope of the work. In such cases the limitation should be identified in the auditor's report.

(b) These auditors should also be sufficiently removed from political pressures to ensure that they can conduct their auditing objectively and can report their conclusions completely without fear of censure. Whenever feasible they should be under a system which will place decisions on compensation, training, job tenure, and advancement on a merit basis.

(c) When independent public accountants or other independent professionals are engaged to perform work that includes inquiries into compliance with applicable laws and regulations, efficiency and economy of operations, or achievement of program results, they should be engaged by someone other than the officials responsible for the direction of the effort being audited. This practice removes the pressure that may result if the auditor must criticize the performance of those by whom he or she was engaged. To remove this obstacle to independence, governments should arrange to have auditors engaged by officials not directly involved in operations to be audited.

(51 FR 41921, Nov. 19, 1986)

APPENDIX C TO PART 668—APPENDIX I, STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES, AND FUNCTIONS (GAO)

Qualifications of Independent Auditors Engaged by Governmental Organizations

(a) When outside auditors are engaged for assignments requiring the expression of an opinion on financial reports of governmental organizations, only fully qualified public accountants should be employed. The type of qualifications, as stated by the Comptroller General, deemed necessary for financial audits of governmental organizations and programs is quoted below:

"Such audits shall be conducted * * * by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States: Except that independent public accountants licensed to practice by such regulatory authority after December 31, 1970, and persons who although not so certified or licensed, meet, in the opinion of the Secretary, standards of education and experience representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations may perform such audits until December 31, 1975; Provided, That if the Secretary deems it necessary in the public interest, he may prescribe by regulations higher standard than those required for the practice of public accountancy by the regulatory authorities of the States."[1]

(b) The standards for examination and evaluation require consideration of applicable laws and regulations in the auditor's examination. The standards for reporting require a statement in the auditor's report regarding any significant instances of noncompliance disclosed by his or her examination and evaluation work. What is to be included in this statement requires judgment. Significant instances of noncompliance, even those not resulting in legal liability to the audited entity, should be included. Minor procedural noncompliance need not be disclosed.

(c) Although the reporting standard is generally on an exception basis—that only noncompliance need be reported—it should be recognized that governmental entities often want positive statements regarding whether or not the auditor's tests disclosed instances of noncompliance. This is particularly true in grant programs where authorizing agencies frequently want assurance in the auditor's report that this matter has been considered. For such audits, auditors should obtain an understanding with the authorizing agency as to the extent to which such positive comments on compliance are desired. When coordinated audits are involved, the audit program should specify the extent of comments that the auditor is to make regarding compliance.

(d) When noncompliance is reported, the auditor should place the findings in proper perspective. The extent of instances of noncompliance should be related to the number of cases examined to provide the reader with a basis for judging the prevalence of noncompliance.

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[1] Letter (B-148144, September 15, 1970) from the Comptroller General to the heads of Federal departments and agencies. The reference to "Secretary" means the head of the department or agency.

APPENDIX D TO PART 668—DEFAULT REDUCTION MEASURES

This appendix describes measures that an institution with a high default rate under the GSL and SLS programs should find helpful in reducing defaults. An institution with a fiscal year default rate that exceeds the threshold rate for a limitation, suspension, or termination action under § 668.15 may avoid those sanctions by demonstrating that it has made a diligent effort to implement the measures included in this Appendix. Other institutions should strongly consider taking these steps as well.

To reduce defaults, the Secretary recommends that the institution take the following measures:

I. Measures to Reduce Defaults by Dropouts

1. Revise admission policies and screening practices, consistent with applicable State law, to ensure that students enrolled in the institution, especially those admitted under "ability to benefit" criterion or those in need of substantial remedial work, have a reasonable expectation of succeeding in their programs of study.

2. Improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, particularly with respect to academically high-risk students.

3. In consultation with the cognizant accrediting body, attempt to reduce its withdrawal rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.

4. Increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution.

5. Implement a compensation structure for commissioned enrollment representatives and salesmen under which a representative or salesman earns no more than a nominal commission for enrolling students that never attend school, and progressively greater commissions for students who remain in school for substantial periods.

6. Implement a *pro rata* refund policy, as defined in 34 CFR 682.606(b)(2) and (c).

7. Delay certification of a first-time borrower's loan application, as described in 34 CFR 682.603(c).

8. Except in the case of a program of study by correspondence, require each first-time student borrower to endorse the loan check at the institution, and pick up at the institution any loan proceeds remaining after deduction of institutional charges.

II. Measures to Reduce Defaults Related to Borrowers' Difficulty Finding Employment

1. Expand its job placement program for its students by, for example, increasing contacts with local employers, counseling students in job search skills, and exploring with local employers the feasibility of establishing internship and cooperative education programs.

2. In consultation with the cognizant accrediting body, attempt to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.

3. Establish a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

III. Measures To Improve Borrowers' Understanding and Respect for the Loan Repayment Obligation

1. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact each borrower with respect to whom the lender has requested preclaims assistance from the guarantee agency to urge the borrower to repay the loan and to emphasize the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested."

2. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact a borrower during the grace period in order to—

(i) Remind the borrower of the importance of the repayment obligation and of the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested"; and

(ii) Update the institution's records regarding the borrower's address, telephone number, employer, and employer's address.

3. At the time of a borrower's admission to the institution, obtain information from the borrower regarding references and family members beyond those provided on the loan application, to enable the institution to provide the lender with a variety of ways to locate a borrower who later relocates without notifying the lender.

4. Require an enrollment representative or salesman to explain carefully to a prospective student that, except in the case of a loan made or originated by the institution, the student's dissatisfaction with, or nonreceipt of, the educational services being of-

fered by the institution does not excuse the borrower from repayment of any GSL or SLS loan made to the borrower for enrollment at the institution.

5. Conduct the following counseling activities in addition to those described in 34 CFR Part 682, Subpart F:

(a) As part of the initial loan counseling provided to a GSL or SLS borrower—

(1) Provide information to the borrower regarding, and through the use of a written test and intensive additional counseling for those who fail the test, ensure the borrower's comprehension of, the terms and conditions of GSL and SLS program loans, including—

(i) The stated interest rate on the borrower's loans;

(ii) The applicable grace period provided to the borrower and the approximate date the first installment payment will be due;

(iii) A description of the charges imposed for failure of the borrower to pay all or part of an installment payment when due; and

(iv) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the lender or guarantee agency to collect the loan, including attorney's fees;

(2) Explain the borrower's rights and responsibilities in the GSL and SLS loan programs including—

(i) The borrower's responsibility to inform his or her lender immediately of any change of name, address, telephone number, or Social Security number;

(ii) The borrower's right to deferment, cancellation or postponement of repayment, and the procedures for obtaining those benefits;

(iii) The borrower's responsibility to contact his or her lender in a timely manner, before the due date of any payment he or she cannot make; and

(iv) The availability of forbearance under the circumstances and procedures described in 34 CFR Part 682;

(3) Provide to the borrower—

(i) (A) General information on the average indebtedness of student borrowers who have obtained GSL or SLS program loans for attendance at that institution and the average amount of a required monthly payment based on that indebtedness; or

(B) The estimated balance owed by the borrower on GSL and SLS loans, and the average amount of a required monthly payment based on that balance; and

(ii) Detailed information regarding the consequences of the failure to repay the loan, including a damaged credit rating for at least 7 years, loss of generous repayment schedule and deferment options, possible seizure of Federal and State income tax refunds due, exposure to civil suit, liability for collection costs, possible referral of the account to a collection agency, garnishment of wages if the borrower is a Federal employee, and loss of eligibility for further Federal Title IV student assistance.

(4) Review the repayment options (*e.g.*, loan consolidation, refinancing) available to the borrower;

(5) Explain the sale of loans by lenders and the use by lenders of outside contractors to service loans; and

(6) Provide general information on budgeting of living expenses and other aspects of personal financial management.

(b) As part of the exit counseling provided to a GSL or SLS borrower—

(1) Provide the counseling and testing described in paragraph (a) for the initial loan counseling;

(2) Provide a sample loan repayment schedule based on the borrower's total loan indebtedness for attendance at that institution;

(3) Provide the name and address of the borrower's lender(s) according to the institution's records;

(4) Provide guidance on the preparation of correspondence to the borrower's lender(s) and completion of deferment forms; and

(c) Obtain information from the borrower regarding the borrower's address, the address of the borrower's next-of-kin, and the name and address of the borrower's expected employer.

6. Use available audio-visual materials, such as videos and films, to enhance the effectiveness of its initial and exit counseling.

IV. General

1. Conduct an annual comprehensive self-evaluation of its administration of the Title IV programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications.

[54 FR 24119, June 5, 1989; 54 FR 37267, Sept. 7, 1989]

PART 669—LANGUAGE RESOURCE CENTERS PROGRAM

Subpart A—General

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AUTHORITY: 20 U.S.C. 1123, unless otherwise noted.

SOURCE: 55 FR 2773, Jan. 26, 1990, unless otherwise noted.

Subpart A—General

§ 669.1 What is the Language Resource Centers Program?

The Language Resource Centers Program makes awards, through grants or contracts, for the purpose of establishing, strengthening, and operating centers that serve as resources for improving the nation's capacity for teaching and learning foreign languages effectively.

(Authority: 20 U.S.C. 1123)

§ 669.2 Who is eligible to receive assistance under this program?

An institution of higher education or a combination of institutions of higher education is eligible to receive an award under this part.

(Authority: 20 U.S.C. 1123)

§ 669.3 What activities may the Secretary fund?

Centers funded under this part must carry out activities to improve the teaching and learning of foreign languages. These activities may include—

(a) The conduct of research on new and improved methods for teaching foreign languages, including the use of advanced educational technology;

(b) The development of new materials for teaching foreign languages, to reflect the results of research on effective teaching strategies;

(c) The development and application of proficiency testing that is appropriate for use in an educational setting to be used as a standard measurement of skill levels in foreign languages;

(d) The training of teachers in the administration and interpretation of foreign language proficiency tests, the use of effective teaching strategies and the use of new technologies;

(e) The publication of instructional materials in the less commonly taught foreign languages; and

(f) The widespread dissemination of research results, teaching materials, and improved pedagogical strategies to the postsecondary education community.

(Authority: 20 U.S.C. 1123)

§ 669.4 What regulations apply?

The following regulations apply to this program:

(a) 34 CFR part 655.

(b) The regulations in this part 669

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants), 34 CFR part 75 (Direct Grant Programs), 34 CFR part 77 (Definitions that Apply to Department Regulations) and 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement)).

(Authority: 20 U.S.C. 1123)

§ 669.5 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR 655.4.

(b) "Language Resource Center" means a coordinated concentration of educational research and training resources for improving the nation's capacity to teach and learn foreign languages.

(Authority: 20 U.S.C. 1123)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 669.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an appli- ation for an award on the basis of the riteria contained in § 669.21.

(b) The Secretary awards up to 100 ossible points for these criteria. How- ver, if the Secretary establishes one r more priorities under § 669.22, the ecretary awards up to 120 possible oints.

(c) The maximum possible points for ach criterion are shown in parenthe- es.

Authority: 20 U.S.C. 1123)

669.21 What selection criteria does the Secretary use?

The Secretary uses the following cri- eria in evaluating applications under his part:

(a) *Plan of operation.* (15) (See 34 FR 655.31(a))

(b) *Quality of key personnel.* (20) See 34 CFR 655.31(b))

(c) *Budget and cost-effectiveness.* 0) (See 34 CFR § 655.31(c))

(d) *Evaluation plan.* (5) (See 34 CFR 55.31 (d))

(e) *Adequacy of resources.* (5) (See 34 FR 655.31(e))

(f) *Need and potential impact.* (30) he Secretary reviews each applica- on to determine—

(1) The extent to which the pro- sed materials or activities are eeded in the foreign languages on hich the project focuses;

(2) The extent to which the pro- sed materials may be used through- t the United States; and

(3) The extent to which the pro- sed work or activity may contribute nificantly to strengthening, expand- g, or improving programs of foreign nguage study in the United States.

g) *Likelihood of achieving results.* 0) The Secretary reviews each appli- tion to determine—

1) The quality of the outlined thods and procedures for preparing e materials; and

(2) The extent to which plans for carrying out activities are practicable and can be expected to produce the anticipated results.

(h) *Description of final form of results.* (5) The Secretary reviews each application to determine the degree of specificity and the appropriateness of the description of the expected results from the project.

(i) *Priorities.* (20) If, under the provisions of § 669.22, the application notice specifies priorities for this program, the Secretary determines the degrees to which the priorities are served.

(Approved by the Office of Management and Budget under control number 1840-0608)

(Authority: 20 U.S.C. 1123)

§ 669.22 What priorities may the Secretary establish?

(a) The Secretary may each year select funding priorities from among the following:

(1) Categories of allowable activities described in § 669.3.

(2) Specific foreign languages for study or materials development.

(3) Levels of education, for example, elementary, secondary, postsecondary, or teacher education.

(b) The Secretary announces any priorities in the application notice published in the Federal Register.

(Authority: 20 U.S.C. 1123)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 669.30 What are allowable equipment costs?

Equipment costs may not exceed fifteen percent of the grant amount.

(Authority: 20 U.S.C. 1123)

PART 673—INCOME CONTINGENT LOAN PROGRAM

Note.—An asterisk (*) indicates provisions that are identical to provisions in Parts 674, 675 and 676.

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APPENDIX A TO PART 673—SAMPLE PROMISSORY NOTE

AUTHORITY: 20 U.S.C. 1087a-1087e, unless otherwise noted.

SOURCE: At 52 FR 17902, May 12, 1987, unless otherwise noted.

Subpart A—Scope, Purpose, and General Definitions

SOURCE: 52 FR 29122, Aug. 5, 1987, unless otherwise noted.

§ 673.1 Purpose.

(a) The Income Contingent Loan (ICL) Program provides loans through institutions of higher education to financially needy students attending those institutions to help them pay their educational costs.

(b) The Secretary implements the ICL Program through the ICL Demonstration Project (Demonstration Project). Under the Demonstration Project, the Secretary provides funds to selected institutions of higher education, to establish a revolving ICL fund at the institution, in order to evaluate the feasibility of a program of student loans using income-based repayment plans.

(Authority: 20 U.S.C. 1087b)

§ 673.2 Definitions.

(a) Subpart A of the Student Assistance General Provisions, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Act
Award year
Campus-based programs
Clock-hour
College Work-Study (CWS) Program
Consolidation Loan Program
Defense loan
Dependent student
Direct loan
Enrolled
Guaranteed Student Loan (GSL) Program
Independent student
National Defense Student Loan Program
National Direct Student Loan (NDSL) Program (now called the Perkins Loan Program)
National of the United States
One-year training program
Parent
Pell Grant Program
Perkins Loan Program (formerly called the National Direct Student Loan Program)
PLUS Program

Postsecondary vocational institution
Proprietary institution of higher education
Public or private nonprofit institution of higher education
Recognized equivalent of a high school diploma
Regular student
Secretary
Six-month training program
State
State Student Incentive Grant (SSIG) Program
Supplemental Educational Opportunity Grants (SEOG) Program, and
Supplemental Loans for Students (SLS) Program

(b) The Perkins Loan Program (formerly National Direct Student Loan (NDSL) Program) regulations, 34 CFR Part 674, sets forth definitions of the following terms used in this part:

Acceleration
Default
Defaulted principal amount outstanding
Eligible program
Expected family contribution (EFC)
Financial need
Half-time graduate or professional student
Half-time undergraduate
Institution of higher education (institution)
Matured loans
Payment period

(c) The Secretary defines other terms used in this part as follows:

Adjusted gross income: The adjusted gross income (AGI) reported on the Federal income tax return.

Base income year: The most recent Federal tax year ending before November 1 of the calendar year preceding the calendar year for which a payment obligation is calculated.

Federal capital contribution (FCC): Federal funds provided to an institution in order to establish and maintain an ICL Fund.

Fund (ICL Fund): A fund established and maintained according to § 673.21.

Grace period: A period of nine consecutive months, starting from the date the borrower ceases to be at least a half-time student at an institution of higher education, during which a borrower does not have to make payments.

Handicapped student: A student who meets the definition in section 602(1) of the Education of the Handicapped Act, as amended [20 U.S.C. 1401(1)], that is, a student who is mentally retarded, hard of hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or is otherwise health-impaired or has specific learning disabilities which require special education and related services.

Initial repayment period: The period of time beginning at the end of the grace period of a borrower and ending December 31 of the first complete calendar year after the end of the grace period.

Institutional capital contribution (ICC): Funds contributed by the institution in order to establish and maintain an ICL Fund.

Opening loan account balance: The principal and accrued interest outstanding on the date on which the grace period of a borrower ends.

(Authority: 20 U.S.C. 1087a–1087e)

Subpart B—Selection and Funding of Demonstration Projects

§ 673.11 Eligible applicants.

An institution is eligible to apply for a grant to carry out an Income Contingent Loan (ICL) Demonstration Project if the institution—

(a) Participates in the current award year in the Pell, campus-based [Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant], and Guaranteed Student Loan Programs;

(b) Offers at least one educational program—

(1) For which it awards a baccalaureate degree; or

(2) Which is at least a two-year program which is acceptable for full credit toward a baccalaureate degree;

(c) Has at least an aggregate of 500 students enrolled in the program(s) described in paragraph (b) of this section; and

(d) Has a Perkins Loan default rate, as defined in 34 CFR 674.6a(d) of no more than 7.5 percent as of December 31 of the calendar year preceding the award year for which the institution applies for a grant.

(Authority: 20 U.S.C. 1087a, 1087b)

§ 673.12 Application for grants.

(a) *New grants.* An institution applies for a new grant for an ICL Demonstration Project by submitting an application that—

(1) Includes information that addresses each of the selection criteria set forth in § 673.14 (g), (h) and (i);

(2) Describes in detail the institution's plans for a Demonstration Project as outlined in § 673.14(f); and

(3) Contains an assurance that the institution will comply with the requirements imposed under this part and will carry out a Demonstration Project for the five years for which the project is authorized.

(b) *Continuation grants.* An institution may apply for funds to continue an ICL Demonstration Project by submitting an application that reports the results of the institutional evaluation completed for the previous award year as set forth in the institution's original application and that requests additional funds.

(Approved by the Office of Management and Budget under control number 1840-0589)

(Authority: 20 U.S.C. 1087b)

§ 673.13 Evaluation of an application.

(a)(1) The Secretary uses the selection criteria in § 673.14 to evaluate applications for new grants.

(2) The Secretary awards up to 120 points for these criteria.

(3) The maximum possible score for each criterion is indicated in parentheses.

(b) The Secretary uses the selection criteria in § 673.15 to evaluate applications for continuation grants.

(c)(1) After evaluating applications for new grants according to the criteria in § 673.14, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition under this program. The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(2) The Secretary may select an application for funding to improve the diversity of activities or projects funded under a particular competition.

(Authority: 20 U.S.C. 1087b)

§ 673.14 Selection criteria—new grants.

(a) *Findings of the latest ED program review.* (15 points) The Secretary reviews the results of the latest ED program review in order to determine whether the applicant has demonstrated compliance with applicable statutes and regulations.

(b) *Results of the institution's most recent audit report submitted to ED.* (15 points) The Secretary reviews the results of the institution's most recent audit report submitted to ED to determine whether a significant misuse of Federal funds has been identified.

(c) *The institution's total number of undergraduate students.* (10 points) The Secretary reviews the total number of undergraduate students as reported by the institution on the Fiscal-Operations Report and Application to Participate (FISAP) in the National Direct Student Loan (NDSL), Supplemental Educational Opportunity Grant (SEOG) and College Work-Study (CWS) Programs for the previous award year to determine whether the institution has experience in administering student assistance programs for a large number of students.

(d) *Compliance with the Pell Grant Program reporting requirements.* (10 points) The Secretary reviews ED records of the institution's compliance with all the deadline dates set by ED for the receipt of institutional payment summary (IPS) documents for the Pell Grant program for the award year prior to the award year for which the institution is applying for a demonstration grant.

(e) *The institution's default rate under the Perkins Loan Program.* (10 points) The Secretary evaluates the information provided by the institution on the FISAP to determine the institution's default rate under the Perkins Loan Program as of June 30 of the calendar year preceding the award year for which the institution applies for a grant. If the institution's default rate has changed since submission of the FISAP, the institution must submit revised Sections A and C of the

FISAP in order for the Secretary to determine the institution's default rate under the Perkins Loan Program as of December 31 of the calendar year preceding the award year for which the institution applies for a grant.

(f) *Plan of operation.* (20 points) (1) The Secretary reviews each application to evaluate the quality of the plan of operation for the project.

(2) The Secretary determines the extent to which the plan of operation shows—

(i) An effective plan of management that insures proper and efficient administration of the project;

(ii) How the objectives of the project relate to the mission of the institution;

(iii) An effective plan to use institutional resources and personnel to achieve each objective;

(iv) A documented process to be used in selecting ICL borrowers; and

(v) An effective plan for publicizing the ICL Program.

(g) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to evaluate the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary evaluates—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (g) (1) and (2) of this section will commit to the project.

(3) To determine personnel qualifications, the Secretary considers experience and training in student financial aid administration, particularly the Perkins Loan Program, related to the objectives of the project, as well as other qualifications relevant to the quality of the project.

(h) *Evaluation plan.* (20 points) (1) The Secretary reviews each application to evaluate the quality of the evaluation plan for the Demonstration Project.

(2) The Secretary determines whether the applicant proposes methods of evaluation that are appropriate for the project and, to the extent possible, produce procedures that may be replicated.

(i) *Willingness to overmatch.* (10 points) The Secretary reviews each application to determine whether the applicant is willing to contribute institutional capital contribution to the loan fund exceeding that required under § 673.21.

(Approved by the Office of Management and Budget under control number 1840-0589)

(Authority: 20 U.S.C. 1087b)

§ 673.15 Selection criteria—continuation grants.

(a) *Compliance with performance and reporting requirements.* The Secretary evaluates the FISAP to determine whether the institution has demonstrated a high degree of compliance with the performance and reporting requirements of the Perkins Loan program as evidence of continuing ability to implement the repayment administration activities required by the ICL Progam.

(b) *Evaluation.* The Secretary determines whether the evaluation submitted by the institution of its experience with the Demonstration Project is thorough and indicates a high level of administrative capability and institutional commitment to the ICL Demonstration Project.

(Authority 20 U.S.C. 1087b)

§ 673.16 Determination of need for ICL Demonstration Project funds.

(a) The Secretary determines an institution's need for ICL Demonstration Project fund Federal Capital Contributions (FCC) according to 34 CFR 674.6, 674.7, and 674.7a.

(b) The amount of Perkins Loan FCC allocated to the institution is considered in determining remaining institutional need for ICL funds.

(Authority: 20 U.S.C. 1087b)

§ 673.17 Allocation of ICL Demonstration Project funds.

(a) The Secretary allocates ICL Demonstration Project funds to institutions on the basis of the institution's need for ICL funds determined in accordance with § 673.16.

(b) If funds appropriated for the ICL Demonstration Project FCC are insufficient to fund the aggregate amount of unmet institutional need as determined in 34 CFR 674.6 for Demonstration Project Institutions, the Secretary allocates funds to institutions on the basis of—

(1) The ratio of each institution's unmet need to the aggregate amount of that need at all Demonstration Project institutions; and

(2) The Secretary's determination of the amount of funds needed to create or sustain an ICL Demonstration Project at the institution at a level consistent with the purpose of the ICL Demonstration Project.

(c)(1) If an institution anticipates not using all of its allocation for an award year for ICLs and for authorized expenses by the end of that award year, it must specify the expected unused amount to the Secretary and return those funds, if directed.

(2) The Secretary distributes funds returned in accordance with paragraph (c)(1) of this section in a manner that best carries out the purposes of the ICL program.

(Authority: 20 U.S.C. 1087b(c))

Subpart C—General Provisions

Source: 52 FR 29122, Aug. 5, 1987, unless otherwise noted.

§ 673.21 Program participation agreement.

To participate in the ICL Program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR Part 668. The agreement provides that the institution shall deposit and maintain these funds in an interest-bearing account. The agreement further provides that—

(a) The institution shall establish and maintain a Fund and shall deposit into the Fund—

(1) FCC appropriated under section 452(b) of the Act;

(2) ICC equal to at least one-ninth of the FCC described in paragraph (a)(1) of this section;

(3) Repayments of principal and interest;

(4) Penalty charges collected under § 673.41 (b) and (c).

(5) Any other earnings of the Fund including any interest earned on the funds listed in paragraphs (a)(1) through (4) of this section; and

(6) Any short term, no-interest loans the institution makes to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for—

(1) Making ICLs to students;

(2) Administrative expenses as provided for in § 673.31;

(3) Capital distributions in accordance with section 466 of the Act;

(4) Litigation costs;

(5) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and penalty charges on a loan made from the Fund; and

(6) Repayment of the short term, no-interest loans made to the Fund by the institution in anticipation of collections or recept of FCC.

(c) At least annually, the institution shall submit a report to the Secretary which contains information on loans in default—

(1) 120 days or more for loans repayable in monthly installments; or

(2) 180 days or more for loans repayable in less frequent installments;

(d) If a loan is in default despite due diligence on the part of the institution in collecting the loan, the institution may assign its rights to the loan to the United States without recompense.

(e) To assist institutions in collecting outstanding loans, the Secretary provides to an institution the names and addresses of borrowers or other information relevant to collection which is available to the Secretary.

(f) The Secretary may require that the institution restore to the Fund the outstanding principal balance, accrued interest, and any administrative cost allowance it received for an ICL if the institution—

(1) Improperly disbursed the loan; or

(2) Failed to exercise due diligence in its collection of the defaulted loan.

(Approved by the Office of Management and Budget under control number 1840-0589)

(Authority: 20 U.S.C. 1087c)

§ 673.22 Student eligibility and selection requirements.

(a) *Eligibility.* A student is eligible to receive funds under the Income Contingent Loan Program at an institution of higher education if the student—

(1) Is a regular student:

(2) Is enrolled or accepted for enrollment as at least a half-time undergraduate student in an eligible program at that institution in accordance with § 673.11(b);

(3)(i) Has a high school diploma or recognized equivalent; or

(ii) Is beyond the age of compulsory school attendance in the State in which the institution he or she is attending is located and has the ability to benefit from the education or training offered by that institution;

(4)(i) Is a U.S. citizen or national;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Mariana Islands;

(5) Except as provided in paragraph (e)(2) of this section, has financial need. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(iii) Directs the member to pursue the course of study or provides subsistence support to is members;

(6) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution:

(7) Does not owe a refund on a grant awarded under the Pell Grant, SEOG or SSIG programs to meet the cost of attending any institution:

(8) Is not in default on any loan made or guaranteed under the Title IV HEA programs to meet the cost of attending any institution; and

(9) Receives a preliminary or final determination from the institution of the student's eligibility or ineligibility for a Pell Grant.

(b) *Overpayment.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive. A student who owes a refund on a Pell Grant, SEOG, or SSIG due to an overpayment is eligible to receive a ICL under the following conditions:

(1)(i) *Overpayment of Pell Grant.* If an institution makes an overpayment of a Pell Grant to a student, that student is eligible to receive an ICL if—

(A) The student is otherwise eligible: and

(B) The institution can eliminate the overpayment in the award year in which it occurred by adjusting subsequent Pell Grant payments for that award year.

(ii) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell Grant as a result of its own error and cannot correct it as specified in paragraph (b)(1)(i)(B) of this section, it may continue to disburse an ICL to that student if the student—

(A) Is otherwise eligible; and

(B) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(2) *Overpayment of an SEOG or SSIG.* If an institution makes an overpayment of an SEOG or SSIG to a student, that student is eligible to receive an ICL if—

(i) The student is otherwise eligible; and

(ii) The institution can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award period in which the overpayment occurred.

(c) *Default on loans.* If a student is in default on a loan made or guaranteed under any title IV HEA Program for attendance at any institution, the institution may nevertheless make an ICL payment to that student under the following conditions:

(1)(i) *Guaranteed loans.* An institution may make an ICL or continue to advance funds to a student who is in default on a loan guaranteed under any Title IV HEA program if the Secretary (for a Federal insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(ii) *Reliance on student's statement.* An institution, in determining whether a student is in default on a loan guaranteed under any Title IV HEA program, may rely upon the student's written statement that he or she is not in default, unless the institution has information to the contrary.

(2) *Perkins Loan.* An institution may make an ICL to a student who is in default on a National Defense/Direct Student Loan or Perkins Loan if the institution that made the loan, or the Secretary, if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay that loan.

(d) *Bankruptcy.* The Secretary does not consider a loan made or guaranteed under a Title IV HEA program that is discharged in bankruptcy to be in default for purposes of paragraph (c) of this section.

(e) *Selection.* (1) An institution shall make ICLs reasonably available within each award year to the extent of available funds first to all eligible students who demonstrate financial need for the loan.

(2) An institution may then use those funds that remain available to make ICLs to eligible students who have not demonstrated financial need for the loan.

(3) The institution shall establish selection procedures and these procedures must be—

(i) Uniformly applied;

(ii) In writing; and

(iii) Maintained in the institution's files.

(4) The institution shall not make an ICL to a student who is unwilling to repay that loan. Default on a previous loan including a defaulted loan discharged in bankruptcy is evidence of that unwillingness.

(Authority: 20 U.S.C. 1087d)

§ 673.23 ICL loan maximums.

(a) *Annual amounts.* The maximum amount a student may borrow under the ICL program in an academic year is—

(1) $2,500 for a student enrolled in the first and second academic year of undergraduate study;

(2) $3,500 for a student enrolled in the third academic year of undergraduate study; and

(3) $4,500 for a student enrolled in the fourth and fifth academic years of undergraduate study.

(b) *Aggregate amounts.* The maximum aggregate amount an eligible student may borrow under the ICL program is $17,500.

(Authority: 20 U.S.C. 1087d(a))

§ 673.24 Allowable costs of attendance—1987–88.

(a) *General.* (1) Except as provided in paragraph (d) of this section a student's cost of attendance means—

(i) The tuition and fees charged to a full-time student for an academic year by the institution he or she is attending as determined under paragraph (b) of this section;

(ii) An allowance for room and board expenses for an academic year, as determined under paragraph (c) of this section;

(iii) A reasonable allowance determined by the institution for books and supplies for an academic year;

(iv) A reasonable allowance determined by the institution for transportation for an academic year. This allowance may include—

(A) The cost of travel between the student's residence and the institution; and

(B) The cost of travel required for completion of a course of study;

(v) A reasonable allowance determined by the institution for miscellaneous personal expenses for an academic year;

(vi) A reasonable allowance determined by the institution for an academic year for expenses related to study abroad for students enrolled in an academic program which normally includes a formal program of study outside the United States;

(vii) A reasonable allowance determined by the institution for expenses for an academic year related to child care for a student's dependent children; and

(viii) A reasonable allowance determined by the institution for a handicapped student's expenses for an academic year related to his or her handicap, if these expenses are not provided for by any other assisting agency or program. This allowance may include expenses related to special services, transportation, equipment and supplies.

(2) The institution shall take into account when determining a student's cost of attendance—

(i) The period for which financial assistance is awarded; and

(ii) Whether the student is enrolled on a full-time or less than full-time basis.

(b) *Tuition and fees.* (1) An institution shall determine the tuition and fees charged a full-time student by calculating—

(i) The actual amount charged the full-time student for tuition and fees for an academic year; or

(ii) The average amount it charges full-time undergraduate students for uition and fees for an academic year.

(2) If an institution establishes its uition and fee charges on a residency equirement basis (e.g., In-State and Out-of-State) and elects to calculate n average charge for tuition and fees, t shall establish a separate average harge for each different residency ased classification.

(3) An institution may determine a eparate average charge for any other istinct classification upon which it ases tuition and fee charges.

(c) *Room and board.* (1) The instituion shall calculate a student's room nd board allowance as follows—

(i) For a student who has no dependents and lives with his or her parent(s), an allowance of not less than $1,100;

(ii) For a student who has no dependents and lives in institutionally owned or operated housing—

(A) The actual amount charged the student for room and board for an academic year; or

(B) A standard allowance based on the average amount it charges most of its student residents for room and board for an academic year;

(iii) For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, a standard allowance determined by the institution for room and board for an academic year; or

(iv) For a student who has dependents, an allowance determined by the institution for room and board for an academic year based upon expenses incurred by the student and his or her dependent(s).

(2) For purposes of this section, a spouse is considered a dependent.

(d) *Attendance costs for students in correspondence study programs.* The cost of attendance for a student enrolled in a correspondence study program means—

(1) Actual tuition and fees charged to the student for an academic year;

(2) A reasonable allowance determined by the institution for books and supplies for an academic year, if required for the completion of the program; and

(3) If incurred in fulfilling a required period of residential training, expenses for—

(i) Room and board; and

(ii) Travel between the student's residence and the institution.

(e) *Adjustments.* An institution may, in individual cases, adjust a student's cost of attendance if the cost of attendance calculated under paragraphs (a) through (d) of this section is not a reasonable approximation of the student's actual costs.

(f) *Required documentation.* An institution shall prepare and retain a written explanation of the cost of attendance figures established under this section.

(Authority: 20 U.S.C. 1087d)

§ 673.25 Expected family contribution—1987-88.

(a) *Annual determinations.* An institution shall determine a student's financial need at least annually.

(b)(1) To determine a student's financial need, an institution shall determine the student's EFC.

(2) To determine an EFC for the period of the student's award, an institution shall use one of the approved systems of need analysis as provided in § 673.26.

(c) *Native American students.* In determining a Native American's EFC, an institution may not consider the following as income or assets of the student and his or her spouse or parent(s):

(1) Awards made under Pub. L. (98-64, the Distribution of Judgment Funds Act (25 U.S.C. 1401 *et seq.*), the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), and the Maine Indian Claims Settlement Act (25 U.S.C. 1721 *et seq.*) However, if the awards under the first or second Acts individually exceed $2,000 only the awards under each of those Acts in excess of $2,000 shall be considered income or assets of the student or the student's spouse or parents;

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust by the U.S. Government for the student or the student's spouse or parent(s).

(d) *Adjustments.* An institution may, in individual cases, adjust an EFC computed according to one of the approved need analysis systems, as provided in § 673.26, if—

(1) The EFC does not accurately reflect the student's, spouse's, or parent's ability to contribute; or

(2) The relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of attendance, regardless of their ability to do so.

(Approved by the Office of Management and Budget under control number 1840-0589)

(Authority: 20 U.S.C. 1087d)

§ 673.26 Approved need and analysis systems—1987-88.

(a)(1) An institution shall use a need analysis system which is approved by the Secretary in determining a student's EFC.

(2) Any system of need analysis approved by the Secretary—

(i) Must consider in determining the amount a dependent student and his or her spouse and parent(s) are expected to contribute toward the student's costs of attendance—

(A) The number of the parents' dependent children;

(B) The number of the parents' dependent children attending institutions of higher education;

(C) Tuition costs of dependent children attending elementary and secondary schools; and

(D) Any unusual expenses of the student or the student's family, such as unusual medical or dental expenses;

(ii) Must consider in determining the amount an independent student and his or her spouse are expected to contribute toward the student's costs of attendance, the student's dependent children; and

(iii) Must produce expected parental contributions that—

(A) Increase incrementally and the parents' financial strength, measured in constant dollars, increases; and

(B) Are equal for parents of equal financial strength.

(3) The Secretary preapproves the need analysis systems described in paragraph (b) of this section, and approves other systems that meet the requirements of this section.

(b) *Preapproved systems for dependent and independent students.* The Secretary preapproves the following need analysis systems—

(1) The system that produces the expected family contribution number (FC) printed on the Student Aid Report provided to the student by the Secretary; and

(2) The EFC used in the Pell Grant Program (34 CFR Part 690).

(c) *Application requirements.* (1) An individual or organization wishing to have a need analysis system approved for an award year shall submit to the Secretary before the closing date published in the FEDERAL REGISTER the following:

(i) A complete description of its system of need analysis for dependent and independent students.

(ii) Its student application form(s) for undergraduate students.

(iii) The expected parental contributions its system produces for dependent undergraduate students under the sample cases published by the Secretary if the majority of students to be served by its system are undergraduates.

(iv) A complete calculation of how each expected parental contribution is derived, including enough information to allow the Secretary to duplicate these calculations and results.

(2) The Secretary does not accept the information specified in paragraph (c)(1) of this section in the form of computer programs, software, or mechanical devices.

(d) *Expected parental contributions and sample cases.* (1) For each award year, the Secretary publishes in the FEDERAL REGISTER sample cases and expected parental contributions for dependent undergraduate students.

(2) The Secretary computes the expected parental contributions for undergraduate dependent students by using sample cases which—

(i) Are based on families of varying sizes with two parents, the older of whom is 45 and is the sole wage earner, and one dependent undergraduate;

(ii) Deduct from the adjusted gross income of the student's working parent—

(A) The amount of Federal income tax (based on a joint return with standard deductions) and social security tax;

(B) An 8 percent allowance on taxable income for State and other taxes; and

(C) A Standard Maintenance Allowance for the family (excluding the applicant during the academic year) using the Department of Labor's estimates for a low budget standard of living;

(iii) Determine the parents' Discretionary Net Worth by deducting a Home and Other Asset Protection Allowance from the net market value of the parents' assets;

(iv) After considering the parents' available income, apply an asset conversion, rate against the parents' Discretionary Net Worth;

(v) Add the amounts determined under paragraph (d)(2)(ii) and (d)(2)(iv) of this section; and (vi) Apply to the amount determined under paragraph (d)(2)(v) of this section, taxation rate schedules for undergraduate students.

(3) The expected parental contributions published by the Secretary do not take into account—

(i) More than one family member attending an institution of higher education as an undergraduate, or graduate or professional student;

(ii) Business or farm assets;

(iii) Nontaxable income;

(iv) Unusual medical or dental expenses;

(v) Other unusual expenses; and

(vi) Elementary and secondary tuition expenses.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Secretary treats an expected parental contribution of less than zero as zero.

(5) To insure measurement in constant dollars, the Secretary revises sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(e) *Approval of systems.* (1) The Secretary approves systems of need analysis for an award year if those systems—

(i) Satisfy the criteria set forth in paragraph (a)(2) of this section; and

(ii) Produce expected parental contributions that are within $50 in 75 percent of the sample cases published by the Secretary.

(2) If the Secretary approves an individual's or organization's system for dependent undergraduate students, the Secretary also approves that individual's or organization's system for independent undergraduate students.

(3) For each award year, the Secretary publishes in the FEDERAL REGISTER a list of approved need analysis systems that institutions shall use in calculating awards for that year.

(Approved by the Office of Management and Budget under control number 1840-0589)

(Authority: 20 U.S.C. 1087d)

§ 673.27 Overaward.

(a) *Overaward prohibited.* *(1) An institution may only award or disburse an ICL to a student selected pursuant to § 673.22(e)(1) if the ICL, when combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing an ICL to a student, the institution must take into account those resources it—

(i) Can reasonably anticipate at the time it awards ICL funds to the student;

(ii) Makes available to it students; or

(iii) Knows about.

(3)(i) If a student receives additional resources before the institution advances the ICL, and the total resources including the ICL exceed the student's need, and the excess is not from employment, the overaward is the amount that exceeds need.

*(ii) If a student receives additional resources after the institution advances the ICL, and the total resources including the ICL exceeds the student's need by $200 or more and the excess is not from employment, the overaward is the amount that exceeds $199.

*(4) If a student earns more money from employment than the institution anticipated or could have reasonably anticipated when it awarded or disbursed the ICL, the institution shall treat the earnings in accordance with paragraph (d) of this section.

*(b) *Resources.* (1) The Secretary considers that "resources" include, but are not limited to, any—

(i) Funds the students is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Waiver of tuition and fees;

(iii) Scholarship or grant, including ROTC or an athletic scholarship;

(iv) Fellowship or assistantship;

(v) Insurance programs for the student's education;

(vi) Veterans benefits;

(vii) Net earnings from employment, other than CWS employment for the period of the award except as provided in 34 CFR 675.23; and

(viii) Except as provided in paragraph (b)(3) of this section, long-term loans, including ICLs, made by the institution pursuant to § 673.22(e)(2); and

(ix) Loans made under the GSL Program.

(2) The Secretary does not consider as a resource any portion of the resources described in paragraph (b)(1) of this section that are included in the student's EFC.

(3) The student may use an ICL made pursuant to §673.22(e)(2), Supplemental Loans for Students (SLS), State-sponsored or private loan programs, or PLUS loans to substitute for his or her expected family contribution. However, if the loan amounts received under § 673.22(e)(2) and under the PLUS or SLS program individually or collectively exceed the student's expected family contribution, the excess is a resource.

(c) *Liability for and recovery of overpayments.* (1) The student is liable for any overpayment of ICL advances made to him or her.

(2) The insitution is also liable for an overpayment if the overpayment occurred because it failed to follow the procedures set forth in this Part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its ICL fund even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it must help the Secretary recover the overpayment by making a reasonble effort to contact the student and recover the overpayment.

(d) *Treatment of earnings in excess of need.* An institution shall take the following steps when it learns that a borrower has earned, or will earn, $200 or more over his or her financial need;

(1) The institution shall decide whether the student has increased fi-

nancial need unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it shall cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $199.

(3) If the student's earnings still exceed his or her need by $200 or more after the institution takes the steps required in paragraphs (d) (1) and (2) of this section, and the student is enrolled for the next academic year, the institution shall consider the amount that exceeds $199 as a resource to help pay the student's cost of attendance in the following year.

(4) If the student's earnings still exceed his or her need by $200 or more after the institution takes the steps required in paragraph (d) (1) and (2) of this section, and the student is not enrolled for the next academic year, no further action is necessary.

(Authority: 20 U.S.C. 1087d)

§ 673.28 Coordination with BIA grants.

(a) To determine the amounts of an ICL for a student selected under § 673.22(e)(1) who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess shall be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell-Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA/eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1087d)

§ 673.29 Making and disbursing loans.

(a)(1) Before an institution makes its first disbursement to a student, the student shall sign the promissory note and the institution shall provide the student with the following information—

(i) The name of the institution and the address to which communications and payments should be sent;

(ii) The principal amount of the loan;

(iii) The applicable interest rate on the loan and, if a variable rate, the manner in which it will be determined over the life of the loan;

(iv) The yearly and cumulative maximum amounts that may be borrowed;

(v) An explanation of when repayment of the loan will begin and when the borrower will be obligated to pay interest that accrues on the loan;

(vi) The repayment terms which the institution may impose;

(vii) Special options the borrower may have for loan consolidation or other refinancing of the loan;

(viii) The borrower's right to prepay all or part of the loan, at any time, without penalty and a summary of the circumstances in which repayment of the loan or interest that accrues on the loan may be deferred or cancelled;

(ix) A definition of default and the consequences to the borrower including a statement that the default may be reported to a credit bureau or credit reporting agency;

(x) The effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

(xi) Any cost that may be assessed on the borrower in the collection of the loan including penalties and collection and litigation costs.

(2) The institution shall provide the information in paragraph (a)(1) of this section to the borrower in writing—

(i) As part of the written application material;

(ii) As part of the promissory note; or

(iii) On a separate written form.

(b)(1) Except as provided in paragraphs (c) and (g) of this section, an institution shall advance in each payment period a portion of a loan awarded for a full academic year.

(2) The institution determines the amount advanced each payment period by the following fraction:

$$\frac{ICL}{N}$$

Where ICL=the total Income Contingent Loan awarded for an academic year and N=the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may advance funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

(c) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may advance ICL funds to the student for those uneven costs.

(d) The institution may advance the loan proceeds to the borrower directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid. In either case, the borrower must sign for each advance of funds on the promissory note.

(e) Subject to the requirements of paragraph (f) of this section—(1) An institution may advance loan proceeds directly to a registered student no more than 10 days before the first day of classes of a payment period, and

(2) An institution may advance loan proceeds by crediting a registered student's account no more than 3 weeks before the first day of classes of a payment period.

(f)(1) The institution shall return to the ICL fund any funds advanced to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(g) Only one advance is necessary if the total amount the institution awards a student for an academic year under the ICL, Perkins Loan program is less than $501.

(h) A correspondence student shall submit his or her first completed lesson before receiving an advance.

(i) If an institution computes a student's need using estimated data submitted before January 1 of the previous calendar year, the institution shall not pay the student unless it verifies that information.

(j) An institutional official shall not obtain a student's power of attorney to authorize any disbursement or to authorize any crediting of a student's account.

(Approved by the Office of Management and Budget under control number 1840-0589)

(Authority: 20 U.S.C. 1087c; 1087d)

§ 673.30 Federal interest in allocated funds—transfer of Fund.

(a) Funds received by an institution under the ICL program, including repayments on loans, are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(b)(1) If an institution responsible for an ICL fund closes or no longer wants to participate in the program, the Secretary directs the institution to take the following steps to protect the outstanding loans and the Federal interest in that Fund:

(i) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act;

(ii)(A) The transfer of the outstanding loans to another institution; or

(B) The transfer of the outstanding loans to the Department of Education.

(2) The Secretary considers cost of collecting the transferred outstanding loans to be equal to the institutional share of those loans.

(3) If the Secretary directs that the outstanding loans be transferred to a second institution, the second institution may deposit the collections on those loans in its own Fund. The Secretary considers the first institution's share of those collections to be the second institution's ICC.

(4) If the Secretary directs that the outstanding loans be transferred to the Department of Education, the Secretary may use the institutional share of those collections to pay collection costs.

(5) If more than one institution offers to collect the outstanding loans, the Secretary directs that the loans be transferred to one or more of the competing institutions on the basis of—

(i) The institution's demonstrated loan collection capability; and

(ii) The number of students of the first institution expected to enroll in the second institution.

(6) The Secretary does not take an audit exception against a transferee institution on account of actions or omissions of the transferor institution in the administration of its Fund. The transferee institution shall segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the transferor institution's program.

(Authority: 20 U.S.C. 1087c)

§ 673.31 Use of funds.

(a) *General.* An institution shall deposit the funds it receives under the ICL program into its Fund. It may use these funds only for making loans and the other activities specified in § 673.21(b).

(b) *Administrative cost allowance.* (1) An institution participating in the ICL program for an award year is entitled to an administrative cost allowance if it advances funds to students in that year.

(2) For any award year, the maximum amount of the allowance equals five (5) percent of the institution's expenditures in that award year under the ICL Program.

(3) An institution shall use its administrative cost allowance to offset its costs of administering the ICL Program. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistant General Provisions regulations, 34 CFR Part 668.

(4) An institution shall charge any administrative costs against its Fund during the same award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1087c)

§ 673.32 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its ICL program, an institution shall establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse funds to students.

(2) A separate bank account for Federal funds is not required, except as provided in paragraph (b) of this section. However, an institution must notify any bank in which it deposits Federal funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(b) *Account for ICL Fund.* (1) An institution must maintain all the cash of its ICL Fund in a separate, federally insured interest-bearing bank account that contains no other funds if the Secretary determines that the institution's accounting system and internal controls do not—

(i) Meet the requirements of paragraph (c) of this section, paragraph (d) of this section, or both;

(ii) Identify the cash balance of the ICL Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Secretary makes that determination on the basis of an audit examination or as a result of a program review.

(3) That separate bank account must be identified as the institution's Federal ICL Fund account and must contain all the cash of the institution's ICL Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, and any earnings of the Fund including interest.

(c) *Deposit of ICC into Fund.* An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

(d) *Records and reporting.* (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) Each year an institution shall submit a program and fiscal report. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution shall maintain on file all ICL applications for those students it reports on the program and fiscal report.

(5) The institution shall maintain all records relating to its applications for funds under this part.

(e) *Retention of records*—(1) *Records.* Each institution shall keep intact and accessible records pertaining to the application for and receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for loan records and audit questions, an institution shall keep records for an award year for five years after it submits its program and fiscal report.

(3) *Loan records.* (i) An institution must maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate that amount of each repayment credited to principal and interest respectively.

(ii) This history shall also show the date, nature, and result of each contact with the borrower or proper endorser in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower and endorser, except routine bills, routine overdue notices, and routine form letters.

(iii) An institution shall retain repayment records, including cancellation and deferment requests, for at least 5 years from the date of the loan's final repayment or cancellation.

(iv) An institution shall keep the original promissory notes and repayment schedules in a locked, fireproof container until the loan obligations are satisfied. The institution shall then return the original notes to the borrower marked paid in full. Only authorized personnel may have access to these documents.

(4) *Separate ICL records.* An institution shall keep ICL cancellation records separate from cancellation records on Perkins Loan, National Defense Student Loans, and National Direct Student Loans.

(5)(i) *Microfilm or computer records.* (i) An institution may keep the records required in this section (except those listed in paragraph (e)(3)(iv) of this section) on microfilm or in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microfilm, the source documents supporting the computer input.

(6) *Audit question.* An institution shall keep records on any claim or expenditure questioned by Federal or non-Federal audit until resolution of any audit questions.

(Approved by the Office of Management and Budget under control number 1840-0589)

(Authority: 20 U.S.C. 1087c)

§ 673.33 Compliance with equal credit opportunity requirements.

(a) In making an ICL an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202).

(b) The Secretary considers the ICL program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, the institution may request a loan applicant or recipient to disclose his or her marital status, income from alimony, child support, and spouse's income and provide the spouse's signature.

(Approved by the Office of Management and Budget under control number 1840-0589)

(Authority: 20 U.S.C. 1087c)

Subpart D—Loan Terms and Conditions

SOURCE: 52 FR 29129, Aug. 5, 1987, unless otherwise noted.

§ 673.41 Permissible charges to students.

(a) *Interest*—(1) *Rate.* (i) The rate of interest that may be charged on an ICL must be, at the discretion of the instruction,—

(A) A fixed rate set at the rate determined in accordance with paragraph (a)(1)(ii) of this section for the calendar year in which the first disbursement is made; or

(B) A variable rate determined in accordance with paragraph (a)(1)(ii) of this section for each calendar year.

(ii) The applicable interest rate is the average bond equivalent rate of the 91-day Treasury bills for the quarter ending September 30 of the preceding calendar year plus three percent.

(2) *Accrual.* Interest accrues on the outstanding principal balance of an ICL from the date of disbursement of funds to the borrower.

(3) *Capitalizing interest.* The institution must add accrued unpaid interest to the principal balance of an ICL annually.

(b) *Late charges.* (1) The institution shall require that the borrower pay a late charge if the borrower fails—

(i) To repay all or part of a scheduled repayment when due; or

(ii) To submit the income information required to determine the annual repayment obligation by November 1.

(2) The institution shall determine the amount of the late charge based on either—

(i) Actual costs incurred in attempting to secure the required payment or information from the borrower; or

(ii) The average cost incurred for similar attempts to secure required payments or information from other borrowers.

(3) The institution may not require a borrower to pay charges imposed under this paragraph in an amount exceeding 20 percent of the most recent installment payment.

(c) *Collection charges.* The institution shall require that the borrower pay the institution for certain reasonable costs incurred by the institution or its agent in collecting any installment not paid when due in accordance with provisions of Subpart E.

(d) *Non-authorized charges.* No charges other than those authorized by this section may be passed on to the borrower, either directly or indirectly. Examples of charges that are not permitted are as follows:

(1) Costs other than those described in paragraphs (b) and (c) of this section associated with preparing letters or notices or making personal contacts or local telephone calls.

(2) Fees charged by a servicing or collection agency, to the extent they exceed permissible charges.

(3) Loan orgination fees.

(Authority: 20 U.S.C. 1087d; 20 U.S.C. 1091a(b))

§ 673.42 Promissory note.

(a) *Promissory note.* (1) An institution may use only an ICL promissory note which the Secretary has approved.

(2) The Secretary has approved the promissory note set forth in Appendix A. The institution shall not change the substance of the note set forth in the Appendix without the Secretary's approval.

(3) The institution—

(i) Shall print the note on one page, front and back; or

(ii) May print the note on more than one page if

(A) The note requires the signature on each page by the borrower and any endorser; or

(B) Each page of the note states both the total number of pages in the complete note as well as the number of each page, *e.g.,* page 1 of 4, page 2 of 4.

(4) An institution shall not record on a single promissory note advances made under a fixed interest rate loan agreement with advances made under a variable interest rate loan agreement.

(5) If the institution records on a single promissory note advances made for an award year under a fixed interest rate loan agreement with advances made during any other award year, the institution shall identify on the note the applicable interest rate for each advance.

(b) *Provisions of the promissory note.*-(1) *Interest* The promissory note must state that—

(i) The applicable interest rate on the loan as determined in § 673.41(a)(1);

(ii) The manner in which that interest rate is determined and, if that rate is a variable rate, the way in which that rate will be calculated throughout the life of the loan; and

(iii) That interest shall accrue beginning on the day of disbursement and ending on the day that all principal, interest, and charges on the loan ar satisfied.

(2) *Repayment.* (i) The promissory note must state that the repayment period—

(A) Begins 9 months after the month in which the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary;

(B) May begin earlier at the borrower's request; and

(C) Varies based on the frequency and amount of payments made under the income contingent repayment plan; and

(ii) The promissory note must state that the borrower shall repay the loan in equal quarterly, bimonthly, or monthly installments established and periodically modified by the institution.

(3) *Cancellation.* The promissory note must state that the unpaid balance of the loan shall be cancelled upon the death or total and permanent disability of the borrower.

(4) *Prepayment.* The promissory note must state that—

(i) The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to satisfy any accrued interest first and then to reduce the original loan amount, and shall not consider these amounts to be prepayments; and

(iii) If a borrower repays more than the amount then due under the repayment plan, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) *Late charge.* (i) An institution may state in the promissory note that the institution will charge a late charge of up to 20 percent of the amount of the borrower's installment payment most recently required if the borrower does not—

(A) Repay all or part of a schedule repayment when due;

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment; or

(C) Submit the required income information to the institution by November 1 of each calendar year in accordance with § 673.43(b)(4).

(ii) The institution may—

(A) Add the late charge to the principal the day after the scheduled repayment was due; or

(B) Demand payment of the late charge from the borrower with the next scheduled repayment after the borrower receives notice of the late charge.

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement unless—

(i) The borrower is a minor; and

(ii) Under applicable State law, a note signed by a minor would not create a binding obligation.

(7) *Acceleration.* The promissory note must state that an institution may demand immediate payment of the entire loan, including any penalty charges and accrued interest if the borrower does not—

(i) Make a scheduled repayment on time;

(ii) File cancellation or deferment form(s) with the institution on time; or

(iii) Submit the income information required under § 673.43(b)(3) for a calendar year despite repeated requests by the institution.

(8) *Cost of collection.* The promissory note must state that the borrower must pay all attorney's fees and other loan collection costs and charges.

(Approved by the Office of Management and Budget under control number 1840–0589)

(Authority: 20 U.S.C. 1087; 20 U.S.C. 1091a)

§ 673.43 Repayment plan.

(a) *General.* The institution shall use—

(1) The repayment plan set forth in this section; or

(2) An alternative income contingent repayment plan which has been approved by the Secretary.

(b) *Payment obligation.*

(1) The institution shall determine the payment obligation of the borrower for each calendar year of the repayment period as a percentage of the adjusted gross income of the borrower, and, if married at any time during the repayment period, of his or her spouse, determined according to the provisions of this paragraph.

(2) The institution may require the borrower to make monthly, bimonthly, or quarterly installment payments.

(3) In order to permit the institution to determine the annual repayment obligation of the borrower, the borrower shall submit the following to the institution by November 1 of each year of the repayment period:

(i) If the borrower or the spouse of the borrower filed a Federal income tax return for the base income year, a copy of those pages of this return which—

(A) Bear the signatures of the person or persons who filed the return; and

(B) Contain the statement of the adjusted gross income for the base income year of the person or persons who filed a return.

(ii) If the borrower or the spouse of the borrower did not file a Federal income tax return for the base income year, documentation of the amount and sources of all taxable income of the non-filer for the base income year.

(iii) If the institution determines that the income data from the base income year, as adjusted in accordance with this paragraph, may not accurately reflect the borrower's ability to repay during the year for which the institution is calculating the repayment obligation, documentation of the amount and sources of taxable income to the borrower and his or her spouse for the current year.

(4) The institution shall determine the adjusted gross income of the borrower and his or her spouse for purposes of this section by multiplying the adjusted gross income or taxable income, as appropriate, derived from information submitted in accordance with paragraph (b)(3) of this section, by an inflation factor announced annually by the Secretary.

(5) Subject to paragraph (b)(6) of this section, the institution shall cal-

culate the borrower's annual repayment obligation as a percentage of the adjusted gross income as determined under paragraph (b)(4) of this section. The institution shall use the following matrix:

INCOME-CONTINGENT LOAN REPAYMENT RATES: PERCENT OF INCOME DUE AS LOAN REPAYMENT

Year of repayment	Opening ICL balance		
	Up to $10,000	$10,000-$19,999	$20,000 and above
Initial repayment period	5	5	5
Year 3	7	9	10
Years 4 and 5	8	10	11
Years 6, 7 and 8	9	11	12
Years 9 and beyond	10	12	12

(6)(i) The institution shall determine the repayment obligation for any year or portion of a year in the initial repayment period in accordance with the matrix set forth in paragraph (b)(5) of this section, unless information needed to determine the ability of the borrower to repay is not submitted in accordance with the requirements of paragraph (b)(3) of this section. If this information is not submitted as required, the institution shall establish the annual repayment obligation as—

(A) Seven percent of the opening ICL balance, for a borrower with an opening ICL balance of less than $10,000;

(B) Six percent of the opening ICL balance, for a borrower with an opening ICL balance between $10,000 and $19,999; or

(C) Five percent of the opening ICL balance, for a borrower with an opening ICL balance of $20,000 or more.

(ii) The institution shall determine the repayment obligation for that part of the initial repayment period preceding the first full calendar year of repayment by—

(A) Determining the repayment obligation of the borrower in accordance with paragraph (b)(6) of this section;

(B) Dividing that amount by 12; and

(C) Multiplying the amount determined in paragraph (b)(6)(ii)(B) of this section by the number of complete months in the period for which the obligation is to be established.

(iii) The institution may, with the consent of the borrower, adjust the annual repayment obligation up to a level of 15% of the borrower's adjusted gross income to cover the annual accruing interest.

(iv) If the borrower demonstrates to the institution that both the borrower and his or her spouse will be in a repayment status on ICLs—

(A) The opening ICL account balance of the borrower and his or her spouse must be summed;

(B) The annual repayment obligation of the couple is determined using the matrix in paragraph (b)(5) of this section; and

(C) The annual repayment obligation of the borrower is determined by multiplying the total annual repayment obligation of the couple by the fraction of the summed opening ICL account balances of the couple owed by the borrower.

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(Authority 20 U.S.C. 1.087c; 20 U.S.C. 1087d)

§ 673.44 Deferment of repayment—financial hardship.

(a) *In-school deferment.* A borrower need not repay principal or interest during a period when a borrower is at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved by the Secretary for this puprose.

(b) *Financial hardship deferment.* A borrower need not repay principal or interest during a period in which an institution determines that the borrower is unable to make the scheduled repayments due to extraordinary circumstances. Periods of financial hardship deferment may not exceed three years in the aggregate over the entire repayment period.

(c) *Interest accrual.* Interest continues to accrue and is capitalized during a deferment period.

(d) *Requests for deferment.* In order to receive a deferment, a borrower must request the deferment in writing and provide the institution with documentation needed to establish eligibility for the deferment.

(e) *Loss of eligibility.* A borrower whose loan has been accelerated is not eligible for deferment on that loan.

(Authority: 20 U.S.C. 1087d(a))

§ 673.45 Cancellation for death or disability.

(a) *General.* An institution shall cancel the unpaid balance of an ICL without regard to the repayment status of the loan, if the borrower dies or becomes totally and permanently disabled, in accordance with this section.

(b) *Death.* An institution shall cancel the unpaid balance of an ICL on the basis of a death certificate or other evidence of death that is conclusive under State law.

(c) *Permanent and total disability.* (1) An institution shall cancel the unpaid balance of an ICL loan if the institution determines, based on medical evidence certified by a physician which the borrower or his or her representative supplies, that the borrower became permanently and totally disabled after receiving the loan.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(Authority: 20 U.S.C. 1087d(a))

Subpart E—Due Diligence

AUTHORITY: 20 U.S.C. 1087a-1087e, unless otherwise noted.

SOURCE: 54 FR 46692, Nov. 6, 1989, unless otherwise noted.

§ 673.51 Due diligence—general requirements.

(a) *General.* Each institution shall exercise due diligence in collecting loans by complying with the provisions in this subpart. In exercising this responsibility, each institution shall, in addition to complying with the specific provisions of this subpart—

(1) Keep the borrower informed, on a timely basis, of all changes in the program that affect his or her rights or responsibilities; and

(2) Respond promptly to all inquiries from the borrower or any endorser.

(b) *Due diligence with regard to endorser.* If a borrower does not respond satisfactorily to the final demand letter required in § 673.53(c)(2) and the loan has been accelerated, an institution shall, in addition to pursuing the borrower, pursue recovery of the debt from any endorser using the steps described in this subpart.

(c) *Coordination of information.* An institution shall ensure that information available in its offices (including the admissions, business, alumni, placement, financial aid, and registrar's offices) is provided to those offices responsible for billing and collecting loans, in a timely manner, as needed to determine—

(1) The enrollment status of the borrower;

(2) The expected graduation or termination date of the borrower;

(3) The date the borrower withdraws, is expelled, or ceases enrollment on at least a half-time basis; and

(4) The current name, address, telephone number, and Social Security number of the borrower.

(Authority: 20 U.S.C. 1087c)

§ 673.52 Contact with the borrower.

(a) *Exit interview.* (1) An institution shall conduct an exit interview with each borrower before he or she leaves the institution. If an individual interview is not feasible, the institution may conduct a group interview. During the interview the institution shall restate for the borrower the terms and outstanding balance of the loan held by the institution, and the borrower's duty to repay the loan in accordance with the repayment schedule as it may vary depending on changes in the income of the borrower and his or her spouse. The institution shall explain to the borrower the consequences of defaulting including, at a minimum, possible referral to a collection firm, reporting to a credit bureau, and litigation. Furthermore, the institution shall explain the borrower's rights and responsibilities under the loan, including the following:

(i) The borrower's responsibility to inform the institution immediately of any change of name, address, telephone number, or Social Security number.

(ii) The borrower's right to deferment, cancellation, or postponement of repayment, and the procedures for filing for those benefits.

(iii) The borrower's responsibility to contact the institution in a timely manner, before the due date of any payment he or she cannot make.

(iv) The borrower's responsibility to submit the income information required under § 673.43(b)(3) to the institution by November 1 of each calendar year.

(2) An institution shall disclose the following information during the exit interview, and shall include it in the promisorry note or in another written statement provided to the borrower:

(i) The name and the address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications, incuding the annual required income information, should be sent.

(ii) The name and the address of the party to which payments should be sent.

(iii) The estimated balance owed by the borrower on the loan held by the institution on the date on which the repayment period is scheduled to begin.

(iv) The stated interest rate on the loan, and, if that rate is variable, the manner in which it is determined.

(v) The current payment formula used to calculate the borrower's annual repayment obligation, the date the first installment payment is due, and the frequency of required payments.

(vi) A statement that the borrower has the right to prepay all or part of the loan at any time without penalty.

(vii) A description of the charges imposed for failure of the borrower to pay all or part of an installment when due.

(viii) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the institution to collect on the loan.

(ix) The estimated total of interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

(3) At the time of the exit interview the institution shall—

(i) Have the borrower sign a copy of the disclosure statement of the current payment formula;

(ii) Provide a copy of the signed promissory note and the signed disclosure statement of the current payment formula to the borrower; and

(iii) Retain signed copies of both the note and the disclosure statement of the current payment formula in the institution's files.

(4) The institution shall contact a borrower promptly after it determines that the borrower either has not attended an exit interview that he or she was scheduled to attend or has already left the institution, and shall—

(i) Provide the borrower, either in person or by mail, the information described in paragraphs (a) (1) and (2) of this section; and

(ii) Provide a copy of the note and two copies of the disclosure statement of the current payment formula to the borrower and request that the borrower promptly sign and return one of the statements to the institution.

(b) *Contact with the borrower during the grace period.* (1) The institution shall contact the borrower three times within the grace period.

(2) (i) The institution shall contact the borrower for the first time 90 days after the commencement of the grace period. The institution shall at this time remind the borrower of his or her responsibility to comply with the terms of the loan and shall send the borrower the following information:

(A) The total amount remaining outstanding on the loan account, including principal and interest expected to accrue over the remaining life of the loan.

(B) The date of the first required payment.

(C) (*1*) The amount of the first required payment if the borrower does not submit the income information as specified in § 673.43(b)(3); or

(*2*) The formula used to calculate the amount of the first required payment if the borrower does submit the income information as specified in § 673.43(b)(3).

(D) An explanation of the borrower's right to choose the payment amount derived under paragraph (b)(2)(i)(C)(*1*) or (b)(2)(i)(C)(*2*) of this section without penalty. This explanation includes informing the borrower of his or her option to submit the income information specified in § 673.43(b)(3) for the initial repayment period.

(ii) The institution shall contact the borrower the second time 150 days after the commencement of the grace period. The institution shall at this time notify the borrower of the date of the first required payment and the information specified in paragraphs (b)(2)(i) (C) and (D) of this section.

(iii) The institution shall contact the borrower the third time 240 days after the commencement of the grace period, and shall then inform him or her of the date and amount of the first required payment and the information specified in paragraphs (b)(2)(i) (C) and (D) of this section.

(c) *Contact with the borrower during the repayment period.* (1) The institution shall contact the borrower by October 1 of each year of the repayment period to remind the borrower of his or her obligation to submit the required income information as specified in § 673.43(b)(3).

(2) The institution shall notify the borrower of his or her annual repayment obligation and the amount and frequency of payments for each year at least 30 days before the first payment for that year is due.

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(Authority: 20 U.S.C. 1087c)

[54 FR 46692, Nov. 6, 1989, as amended at 55 FR 10238, Mar. 15, 1990]

§ 673.53 Billing procedures.

(a) The term "billing procedures," as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers to submit overdue payments or required income information, and to demand payment of overdue amounts. An institution shall use the following billing procedures:

(1) If the institution uses a coupon payment system, it shall send the coupons to the borrower at least 30 days before the first payment of the annual repayment obligation is due.

(2) If the institution does not use a coupon system, it shall send to the borrower—

(i) A written notice giving the name and address of the party to which payments are to be sent and a statement of account at least 30 days before the first payment of the annual repayment obligation is due; and

(ii) A statement of account at least 15 days before the due date of each subsequent payment.

(b) (1) An institution shall send a first overdue notice within 15 days after the due date for a payment or the required income information if the institution has not received—

(i) The required payment;

(ii) A request for deferment;

(iii) A request for cancellation; or

(iv) The required income information.

(2) Subject to § 673.57(a), the institution shall assess a late charge for loans during the period in which the institution takes any steps described in this section to secure—

(i) Any part of an installment payment not made when due;

(ii) A request for deferment or cancellation of repayment on the loan that contains sufficient information to enable the institution to determine whether the borrower is entitled to the relief requested; or

(iii) The income information required to be submitted annually by the borrower.

(3) The institution shall determine the amount of the late charge based on either—

(i) Actual costs incurred for actions required under this section to secure the required payment of information from the borrower; or

(ii) The average cost incurred for similar attempts to secure payments or information from other borrowers.

(4) The institution may not require a borrower to pay late charges in an amount, for each late payment, income information submission, or re-

quest, exceeding 20 percent of the installment payment most recently due.

(5) The institution shall notify the borrower of the amount of the charge it has imposed, and whether the institution—

(i) Has added that amount to the principal amount of the loan as of the first day on which the installment was due; or

(ii) Demands payment for that amount in full no later than the due date of the next installment.

(c) If the borrower does not satisfactorily respond to the first overdue notice, the institution shall continue to contact the borrower as follows, until the borrower makes satisfactory repayment arrangements, submits the required income information, or demonstrates entitlement to deferment of cancellation:

(1) The institution shall send a second overdue notice within 30 days after the first overdue notice is sent.

(2) The institution shall send a final demand letter within 15 days after the second overdue notice. This letter must inform the borrower that, as appropriate—

(i) If the institution does not receive the required income information within 30 days of the date of the letter, it will report the default to a credit bureau;

(ii) If the institution does not receive a payment or a request for deferment or cancellation within 30 days of the date of the letter, it will refer the account for collection or litigation, and will report the default to a credit bureau.

(d) Notwithstanding paragraphs (b) and (c) of this section, an institution may send a borrower a final demand letter if the institution has not within 15 days after the due date received a payment, the required income information, or a request for deferment or cancellation, and if—

(1) The borrower's repayment history has been unsatisfactory, e.g., the borrower has previously failed to make payment(s) when due, to submit the required income information, or to request deferment in a timely manner, or has previously received a final demand letter; or

(2) The institution reasonably concludes that the borrower neither intends to repay the loan or to submit the required income information nor intends to seek deferment or cancellation of the loan.

(e) (1) An institution that accelerates a loan as provided in § 673.42 (i.e., makes the entire outstanding balance of the loan, including accrued interest and any applicable late charges, payable immediately) shall—

(i) Provide the borrower, at least 30 days before the effective date of the acceleration, written notice of its intention to accelerate; and

(ii) Provide the borrower on or after the effective date of acceleration, written notice of the date on which it accelerated the loan and the total amount due on the loan.

(2) The institution may provide these notices by including them in other written notices to the borrower, including the final demand letter.

(f) If the borrower does not respond to the final demand letter within 30 days from the date it was sent, the institution shall attempt to contact the borrower by telephone before beginning collection procedures.

(g) (1) An institution shall ensure that any funds collected as a result of billing the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

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(Authority: 20 U.S.C. 1087c)

[54 FR 46692, Nov. 6, 1989, as amended at 55 FR 10238, Mar. 15, 1990]

§ 673.54 Address searches.

(a) If mail, other than unclaimed mail, sent to a borrower is returned undelivered, an institution shall take steps to locate the borrower. These steps must include—

(1) Reviews of records in all appropriate institutional offices;

(2) Reviews of telephone directories or inquires of information operators in the locale of the borrower's last known address; and

(3) Use of the Department of Education's ship-tracing service.

(b) If an institution is unable to locate a borrower by the means described in paragraph (a) of this section, it shall—

(1) use its own personnel to attempt to locate the borrower, employing and documenting efforts comparable to commonly accepted commercial skip-tracing practices; or

(2) Refer the account to a firm that provides commercial skip-tracing services.

(c) If the institution acquires the borrower's address or telephone number through the efforts described in this section, it shall use that new information to continue its efforts to collect on that borrower's account in accordance with the requirements of this subpart.

(d) If the institution is unable to locate the borrower after following the procedures in paragraphs (a) and (b) of this section, the institution shall make reasonable attempts to locate the borrower at least twice a year until—

(1) Litigation to collect the borrower's account is barred under the applicable statute of limitations; or

(2) The account is written off under § 673.57(g).

(Authority: 20 U.S.C. 1087c)

§ 673.55 Collection procedures.

(a) The term "collection procedures," as used in this subpart, includes that series of more intensive efforts, including litigation as described in § 673.56, to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of the institution's billing procedures. If a borrower does not satisfactorily respond to the final demand letter or the following telephone contact made in accordance with § 673.53(f), the institution shall take the following actions—

(1) Report the defaulted account to a credit bureau, unless specifically prohibited by State law;

(2) Use its own personnel to collect the amount due or demand the required income information; or

(3) Engage a collection firm to collect any account that has been accelerated or on which the borrower is not making payments at regularly scheduled intervals.

(b)(1) An institution shall select one or more credit bureaus for its information referrals with due regard for the coverage provided by the bureau or bureaus. An institution may select a bureau which serves—

(i) The areas from which the major portion of its students was drawn; or

(ii) The areas in which all or a major portion of its alumni/ae now reside.

(2) An institution shall report, according to the reporting procedures of the bureau, any changes in account status to the bureau to which it reported the defaulted account, and shall respond promptly and accurately to any inquiry from any bureau regarding the information reported on the loan account.

(c) (1) If the institution, or the firm it engages, pursues collection activity for up to 12 months and does not succeed in converting the account described in paragraph (a)(3) of this section to required repayment status, or the borrower does not qualify for deferment or cancellation on the loan, the institution shall either—

(i) Litigate; or

(ii) Make a second effort to collect the account as follows:

(A) If the institution first attempted to collect the account using its own personnel, it shall, unless specifically prohibited by State law, refer the account to a collection firm.

(B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firm.

(2) If the collection firm retained by the institution does not succeed in placing an account into a repayment status described in paragraph (c)(1) of

this section after 12 months of collection activity, the institution shall require the collection firm to return the account to the institution.

(d) If the institution is unable to place the loan in a repayment status described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this section, the institution shall continue to make annual attempts to collect from the borrower until recovery in litigation to collect the account would be barred under the applicable statute of limitations.

(e) (1) Subject to § 673.57(d), the institution shall assess against the borrower all reasonable costs incurred by the institution with regard to a loan obligation.

(2) The institution shall determine the amount of collection costs that shall be charged to the borrower for actions required under this section, and §§ 673.54, 673.56, 673.58, and 673.59, based on either—

(i) Actual costs incurred for these actions with regard to the individual borrower's loan; or

(ii) Average costs incurred for similar actions taken to collect loans in similar stages of delinquency.

(3) The Fund must be reimbursed for collection costs initially charged to the Fund and subsequently paid by the borrower.

(f) (1) An institution shall ensure that any funds collected from the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

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(Authority: 20 U.S.C. 1087c, 1091a)

[54 FR 46692, Nov. 6, 1989, as amended at 55 FR 10238, Mar. 15, 1990]

§ 673.56 Litigation procedures.

(a) (1) If the collection efforts described in § 673.55(c)(1) do not result in the repayment of a loan, the institution shall determine at least annually, until litigation to collect the account is barred under the applicable statute of limitations, whether—

(i) The total amount owing on the borrower's account, including outstanding principal, accrued interest, collection costs, and late charges on all of the borrower's ICLs held by that institution, is more than $200;

(ii) The borrower can be located and served with process;

(iii) (A) The borrower has sufficient assets attachable under State law to satisfy a major portion of the outstanding debt; or

(B) The borrower has income from wages or salary which may be garnished under applicable State law sufficient to satisfy a major portion of the debt over a reasonable period of time;

(iv) The borrower does not have a defense that will bar judgment for the institution; and

(v) The expected cost of litigation, including attorney's fees, does not exceed the amount which can be recovered from the borrower.

(2) The institution shall sue the borrower if it determines that the conditions in paragraph (a)(1) of this section are met.

(3) The institution may sue a borrower in default, even if the conditions in paragraph (a)(1) of this section are not met.

(b) The institution shall assess against and attempt to recover from the borrower—

(1) All litigation costs, including attorney's fees, court costs, and other related costs, to the extent permitted under applicable law; and

(2) All prior collection costs incurred and not yet paid by the borrower.

(c) (1) An institution shall ensure that any funds collected as a result of litigation procedures are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(Authority: 20 U.S.C. 1087c)

§ 673.57 Costs chargeable to the Fund.

(a) *General: billing costs.* (1) Except as provided in paragraph (c) of this section, the institution shall assess against the borrower, in accordance with § 673.53(b)(2), the cost of actions taken with regard to past-due payments on the loan.

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the late charges, the institution may charge the Fund only that portion of the late charges which represents the unpaid portion of the cost of telephone calls to the borrower pursuant to § 673.53 to demand payment of overdue amounts and income information not timely submitted.

(b) *General: collection costs.* (1) Except as provided in paragraph (d) of this section, the institution shall assess against the borrower, in accordance with §§ 673.55(e) and 673.56(b), the costs of actions taken on the loan obligation pursuant to §§ 673.54, 673.55, 673.56, 673.58, and 673.59.

(2) If the amount recovered from the borrower is not sufficient to pay the amount on the past-due payments, late charges, and these collection costs, the institution may charge against the Fund the unpaid collection costs in accordance with paragraph (e) of this section.

(c) *Waiver: late charges.* The institution may waive late charges assessed against a borrower who repays the full amount of the past-due payments on a loan.

(d) *Waiver: collection costs.* Before filing suit on a loan, the institution may waive that percentage of the collection costs applicable to the amount then past due on the loan equal to the percentage of that past-due balance that the borrower pays within 30 days of the date on which the borrower and the institution enter into a written repayment agreement on the loan.

(e) *Limitations on costs charged to the Fund.* The institution may charge to the Fund the following costs not paid by the borrower, including amounts waived under paragraph (d) of this section:

(1) A reasonable amount for the cost of a successful address search required in § 673.54(b).

(2) Costs related to the use of credit bureaus as provided in § 673.55(b)(1).

(3) For first collection efforts pursuant to § 673.55(a)(3), an amount that does not exceed 33⅓ percent of the amount of principal, interest, and late charges collected.

(4) For second collection efforts pursuant to § 673.55(c)(1)(ii), an amount that does not exceed 50 percent of the amount of principal, interest, and late charges collected.

(5) For litigation costs, including attorney's fees, court costs, and other related costs, an amount which does not exceed—

(i) Actual costs incurred in taking specific actions in bankruptcy proceedings required or authorized under § 673.59;

(ii) That portion of costs of other actions in bankruptcy proceedings which, together with costs authorized and incurred under paragraph (e)(5)(i) of this section, do not exceed one-third of the total amount of the judgment obtained on the loan; and

(iii) In all other cases, 50 percent of the amount collected on a judgment obtained against the borrower.

(6) If a collection firm performs or contracts for the performance of both collection and litigation activities on a defaulted loan, an amount for both of the functions that does not exceed 33⅓ percent of the amount of principal, interest, and late charges collected by a first collection effort as required in § 673.55(a), or 50 percent for a second collection effort as required in § 673.55(c)(1).

(f) *Records.* For audit purposes, an institution shall support the amount of collection costs charged to the Fund with appropriate documentation, including telephone bills and receipts from collection firms. The documentation must be maintained in the institution's files as provided in § 673.32.

(g) *Write-offs.* (1) An institution may write off an account if—

(i) (A) It carries out the procedures in §§ 673.53, 673.54 and 673.55; and

(B) The total amount owing on a borrower's loan account held by that institution, including outstanding principal, accrued interest, late charges, and collection costs on all of the borrower's ICLs is $200.00 or less; or

(ii) (A) The loan is discharged in bankruptcy; and

(B) The institution has exhausted the procedures in this subpart with regard to any endorser.

(2) An institution which writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

(3) If an institution receives a payment from a borrower after the loan has been written off, it shall deposit that payment into the Fund.

(Approved by the Office of Management and Budget under control number 1840-0621)

(Authority: 20 U.S.C. 1087c, 1091a)

[54 FR 46692, Nov. 6, 1989, as amended at 55 FR 10238, Mar. 15, 1990]

§ 673.58 Use of contractors to perform billing and collection or other program activities.

(a) The institution is responsible for ensuring compliance with the billing and collection procedures set forth in this subpart. The institution may use employees to perform these duties or may contract with other parties to perform them.

(b) An institution that contracts for performance of any duties under this subpart remains responsible for compliance with the requirements of this subpart in performing these duties, including decisions regarding cancellation or deferment of repayment, extension of the repayment period, other billing and collection matters, and the safeguarding of all funds collected by its employees and contractors.

(c) If an institution uses a billing service to carry out billing procedures under § 673.53, the institution shall ensure that the service—

(1) Provides at least quarterly, a statement to the institution which shows—

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number, and, if known, any changes to the borrower's Social Security number; and

(iii) Amounts collected from the borrower;

(2) Provides at least quarterly, a statement to the institution with a listing of its charges for skip-tracing activities and telephone calls;

(3) Does not deduct its fees from the amount it receives from borrowers;

(4) (i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lock-box maintained for the institution; or

(iii) Deposits those funds received directly from the borrower immediately upon receipt in an institutional trust account; and

(5) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(d) If the institution uses a collection firm, the institution shall ensure that the firm—

(1) (i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lock-box maintained for the institution; or

(iii) Deposits those funds received directly from the borrower promptly in an institutional trust account, after deducting its fees, if authorized to do so by the institution; and

(2) Provides at least quarterly, a statement to the institution which shows—

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number and, if known, any changes to the borrower's Social Security number;

(iii) Amounts collected from the borrower; and

(3) Maintains a fidelity bond or comparable insurance in accordance with

the requirements in paragraph (f) of this section.

(e) If an institution uses a billing service to carry out § 673.53 (billing procedures), it may not use a collection firm that—

(1) Owns or controls the billing service;

(2) Is owned or controlled by the billing service; or

(3) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.

(f) (1) An institution that employs a third party to perform billing or collection services required under this subpart shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance in accordance with the requirements of this paragraph.

(2) If the institution does not authorize the third party to deduct its fees from payments from borrowers, the institution shall ensure that the party is bonded or insured in an amount not less than the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party.

(3) If the institution authorizes the third party performing collection services to deduct its fees from payments from borrowers, the institution shall ensure that—

(i) If the amount of funds that the institution reasonably expects to be paid over a two-month period on accounts it refers to the party is less than $100,000, the party is bonded or insured in an amount equal to the lesser of—

(A) Ten times the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party; or

(B) The total amount of funds that the party demonstrates will be repaid over a two-month period on all accounts of any kind on which it performs billing and collection services; and

(ii) If the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party is more than $100,000, the institution shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance—

(A) Naming the institution as beneficiary; and

(B) In an amount not less than the amount of funds reasonably expected to be repaid on accounts referred by the institution to the party during a two-month period.

(4) The institution shall review annually the amount of repayments expected to be made on accounts it refers to a third party for billing or collection services, and shall ensure that the amount of the fidelity bond or insurance coverage maintained continues to meet the requirements of this paragraph.

(Approved by the Office of Management and Budget under control number 1840-0621)

(Authority: 20 U.S.C. 1087c)

[54 FR 46692, Nov. 6, 1989, as amended at 55 FR 10238, Mar. 15, 1990]

§ 673.59 Bankruptcy of borrower.

(a) *General.* If an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of meeting of creditors, the institution and its agents shall immediately suspend any collection efforts outside the bankruptcy proceeding—

(1) Against the borrower; and

(2) If the borrower has filed for relief under chapter 12 or 13 of the Bankruptcy Code, against any endorser.

(b) *Proof of claim.* The institution shall file a proof of claim in the bankruptcy proceeding, unless, in the case of a proceeding under Chapter 7 of the Bankruptcy Code, the notice of meeting of creditors states that the borrower has no assets.

(c) *Borrower's request for determination of dischargeability.* (1) The institution shall follow the procedures in this paragraph if it is properly served with a complaint in a proceeding under chapter 7, 11, or 12 of the Bankruptcy Code, or under 11 U.S.C. 1328(b), for a determination of dischargeability under 11 U.S.C. 523(a)(8)(B) on on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents.

(2) If more than five years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief in bankruptcy, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) If less than five years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief, the institution shall determine, on the basis of reasonably available information, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under § 673.44(b) would impose an undue hardship on the borrower and his or her dependents.

(4) If the institution concludes that repayment would not impose an undue hardship, the institution shall determine whether the costs reasonably expected to be incurred to oppose discharge will exceed one-third of the total amount owed on the loan, including all unpaid principal, interest, late charges, and collection costs.

(5) If the expected costs of opposing discharge of such a loan do not exceed one-third of the total amount owed on the loan, the institution shall—

(i) Oppose the borrower's request for a determination of dischargeability; and

(ii) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(6) In opposing a request for a determination of dischargeability, the institution may compromise a portion of the amount owed on the loan if it reasonably determines that the compromise is necessary in order to obtain a judgment for the institution on the loan.

(d) *Request for determination of non-dischargeability.* The institution may file a complaint for a determination that a loan obligation is not dischargeable and for judgment on the loan if the institution would have been required under paragraph (c) of this section to oppose a request for a determination of dischargeability with regard to that loan.

(e) *Chapter 13 repayment plan.* (1) The institution shall follow the procedures in this paragraph in response to a repayment plan proposed by a borrower who has filed for relief under chapter 13 of the Bankruptcy Code.

(2) The institution is not required to respond to a proposed repayment plan, if—

(i) The borrower proposes under the repayment plan to repay all principal, interest, late charges, and collection costs on the loan; or

(ii) The repayment plan makes no provision with regard either to the loan obligation or to general unsecured claims.

(3)(i) If the borrower proposes under the repayment plan to repay less than the total amount owed on the loan, the institution shall determine from its own records and court documents—

(A) The amount of the loan obligation dischargeable under the plan by deducting the total payments on the loan proposed under the plan from the total amount owed;

(B) Whether the plan or the classification of the loan obligation under the proposed plan meets the requirements of section 1325 of the Code; and

(C) Whether grounds exist under 11 U.S.C. 1307 to move for conversion or dismissal of the chapter 13 case.

(ii) If the institution determines that grounds exist to support these actions and reasonably expects that costs of the appropriate actions will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) Object to confirmation of a proposed plan that does not meet the requirements of 11 U.S.C. 1325; and

(B) If grounds can be established under 11 U.S.C. 1307, either

(*1*) Move to dismiss the case, or

(*2*) If the loan entered repayment less than five years, excluding periods of deferment, before the petition for relief, move to convert the case.

(4)(i) The institution shall monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a "hardship discharge" under 11 U.S.C. 1328(b), the institution shall determine from its own records and information derived from documents filed with the court—

(A) Whether grounds exist under 11 U.S.C. 1307 to convert or dismiss the case; and

(B) Whether the borrower has demonstrated entitlement to the "hardship discharge" by meeting the requirements of 11 U.S.C. 1328(b).

(ii) If the institution determines that grounds exist to support these actions and reasonably expects that costs of the appropriate actions, when added to the costs already incurred in taking actions authorized under this section, will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) (*1*) Move to dismiss the case, or

(*2*) If the loan entered repayment less than five years, excluding periods of deferment, before the petition for relief, move to convert the case; and

(B) Oppose the requested discharge where the debtor has not demonstrated that the requirements of 11 U.S.C. 1328(b) are met.

(f) *Resumption of collection from the borrower.* The institution shall resume billing and collection action prescribed n this subpart after—

(1) The borrower's petition for relief n bankruptcy has been dismissed;

(2) The borrower has received a discharge under 11 U.S.C. 727, 11 U.S.C. 1141, 11 U.S.C. 1228, or 11 U.S.C. 1328(b), unless—

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and he dependents of the borrower; or

(ii)(A) The loan entered the repayment period more than five years, exluding periods of deferment, before he filing of the petition, and

(B) The loan is not excepted from ischarge under other applicable proisions of the Code; or

(3) The borrower has received a disharge under 11 U.S.C. 1328(a) after ompletion of a repayment plan which made no provisions with regard to ither—

(i) The loan obligation; or

(ii) Unsecured claims in general.

(g) *Resumption of collection from the endorser.* The institution shall resume billing and collection action against an endorser of a borrower who has filed for relief under chapter 12 or 13 of the Code after the borrower's case has been completed or dismissed, or the stay applicable to such action has been lifted.

(h) *Termination of collection and write-off.* (1) An institution shall terminate all collection action and write off a loan on which there is no endorser if it receives—

(i) A general order of discharge under chapter 7, 11, or 12 of the Bankruptcy Code or a discharge order under 11 U.S.C. 1328(b) for a borrower owing a student loan obligation which entered the repayment period more than 5 years, excluding periods of deferment, before the date on which a petition for relief was filed;

(ii) A discharge order under chapter 13 of the Bankruptcy Code, except an order under 11 U.S.C. 1328(b) for a borrower owing a student loan obligation which entered the repayment period less than 5 years, excluding periods of deferment, before the filing of the petition of relief.

(iii) A judgment that repayment of the debt would constitute an undue hardship, and that the debt is therefore dischargeable.

(2) If an institution receives a repayment from a borrower after a loan has been discharged, it shall deposit that payment in its Fund.

(3) An institution may write off a loan on which there is an endorser only after it has exhausted the procedures in this subpart with regard to the endorser.

(Approved by the Office of Management and Budget under control number 1840-0621)

(Authority: 20 U.S.C. 1087c)

[54 FR 46692, Nov. 6, 1989, as amended at 55 FR 10238, Mar. 15, 1990]

APPENDIX A TO PART 673—SAMPLE PROMISSORY NOTE

Income Contingent Loan Program

I, —— promise to pay to —— (hereinafter called the Lending Institution) located at —— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable costs and charges necessary for the collection of any amount not paid when due. I promise to pay interest on the outstanding balance owing on this loan, including late charges and collection costs, at the rate set forth in paragraph II of this note.

I further understand and agree that:

I. General

All sums advanced under this note are drawn from a fund created under Part D of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are available from the Lending Institution.

II. Interest

Interest is charged on this loan from the date of disbursement of any funds under this loan agreement. The interest rate on funds advanced under this agreement is [check applicable paragraph]—

( ) a fixed rate that is set at the time of the first advance of funds to me for an award year (July 1 through June 30). This fixed rate applies to all funds advanced to me for that award year until I repay those funds and any unpaid interest on those funds. This fixed rate is set at three percent over the average bond equivalent rate of 91-day U.S. Treasury bills for the calendar quarter ending on September 30 of the calendar year preceding the award year in which the first disbursement is made. The rate that applies to funds advanced to me under this agreement is set forth in the schedule of advances included in this note.

( ) a variable rate that applies to all funds advanced to me under this loan agreement. This variable rate may change for each calendar year until I repay these funds and any unpaid interest on these funds. This variable rate is set at three percent over the average bond equivalent rate of 91-day U.S. Treasury bills for the quarter ending on September 30 of the calendar year before the calendar year for which the rate applies.

III. Repayment

(1) I promise to begin to repay the principal and the interest which accrues on it to the Lending Institution not later than nine (9) months after the date I cease to be at least a half-time regular student at an eligible institution of higher education or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (he inafter called the Secretary).

(2) I may, if I choose, begin the repa ment period earlier than the date on whi I would be required to begin in paragra III(1).

(3) I promise to repay the principal, inte est, and any other charges over the cour of the repayment period in monthly, b monthly, or quarterly installments, as dete mined by the Lending Institution. A copy the current payment formula which th Lending Institution will use to calculate m annual repayment obligation is attached t this note, and is part of this repaymen agreement. The payment formula is subjec to change by Federal regulation, and suc changes, if any, will become part of this re payment agreement. I understand, howeve that in no case will my annual repaymen obligation be greater than 15% of my ad justed gross income and that of my spouse

(4) I promise to submit to the Lending Institution the information on my income and, if I am married at any time during the repayment period on this loan, the information on the income of my spouse necessary to calculate my annual payment obligation. I promise to submit this information by November 1 of each year. I understand that continued failure to submit this information will constitute a default on this loan.

IV. Prepayment

(1) I may, at my option and without penalty, repay all or any part of the outstanding balance of this loan at any time.

(2) The Lending Institution will use any amounts I prepay in the same academic year in which the loan was made to reduce the amount of the loan.

(3) If I repay more than the amount due for any installment, and I do not designate it as an advance payment of the next regular installment, the Lending Institution will use the excess amount to prepay principal.

V. Default

(1) I understand that the Lending Institution may declare my loan to be in default and require immediate payment of the entire unpaid balance of my loan, including accrued interest, late charges, and collection costs, if—

(A) I fail to make a scheduled repayment of any installment when due under the repayment schedule established by the Lending Institution, or

(B) Despite demand by the institution, I fail to submit information regarding my income, and the income of my spouse, needed to calculate my repayment obligation.

(2) I understand that if I default on my loan, the Lending Institution may disclose

that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) I understand that after the Lending Institution accelerates the loan under paragraph V(1), I will then lose my right to defer repayments due after the date the Lending Institution accelerates the loan.

(4) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional Federal financial aid.

VI. Deferment

The Lending Institution may permit me to defer making my scheduled repayments if it determines that extraordinary circumstances, such as illness or unemployment, prevent me from making those scheduled repayments or when I am enrolled as at least a half-time student at an institution of higher education. I understand that I must request this deferment in writing on a timely basis. Interest will continue to accrue on the unpaid balance of my loan during periods of deferment. The Lending Institution will add the amount of interest that accrues during a period of deferment to the balance of my loan.

VII. Death and Disability Cancellation

If I should die or become permanently and totally disabled, the total principal, interest, and other charges on this loan shall be cancelled.

VIII. Change in Name, Address, and Social Security Number

I understand that I, and any party signing this note as a comaker or endorser, must inform the Lending Institution of any change in my name, address, or social security number.

IX. Late Charges

(1) The Lending Institution may impose a late charge if I fail to make all or any part of a scheduled installment payment when it is due.

(2) The Lending Institution may impose a late charge if I fail to provide by November 1 of each year, the required income information necessary to calculate my annual payment obligation.

(3) This charge may be up to 20 percent of the amount of the installment payment then due.

(4)(A) The Lending Institution may either—

(i) Add the amount of the late charge to the principal on the day after the missed scheduled repayment was due; or

(ii) Require that I repay it with a future scheduled repayment.

(B) If the Lending Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

X. Prior Loans

I have listed below all of the ICL, Perkins Loans, and National Direct Student Loans (or National Defense Student Loans) I have obtained at other institutions. (If no prior loans have been received state "None.")

SCHEDULE OF ICL, PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XI. Schedule of Advances

The following amounts were advanced to me on the dates indicated:

	Amount	Date	Interest rate	Signature of borrower
1				
2				
3				
4				

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE LENDING INSTITUTION MUST SUPPLY TO YOU AND ANY ENDORSER A COPY OF THIS NOTE.

[This notice is signed as a sealed instrument.]

Signature ——————————

[(seal)].

Date ——————— 19——.

Permanent Address (Street or Box Number, City, State, and Zip Code) Social Security Number (endorser must provide)————————.

The borrower and Lending Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Lending Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Lending Institution shall require the following endorsement:

Signature ——————————

[(Seal)].

Date————————— 19——.

Permanent Address (Street or Box Number, City, State, and Zip Code) Social Security Number (borrower must provide)———————.

PART 674—PERKINS LOAN PROGRAM

NOTE: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

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AUTHORITY: 20 U.S.C. 1087aa-1087hh and 20 U.S.C. 421-429 unless otherwise noted.

Subpart A—General Provisions

SOURCE: 52 FR 45747, Dec. 1, 1987, unless otherwise noted.

§ 674.1 Purpose and identification of common provisions.

(a) The Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs.

(b)(1) The Perkins Loan Program authorized by Title IV-E of the Higher Education Act of 1965 and previously named the National Direct Student Loan Program is a continuation of the National Defense Student Loan Program authorized by Title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under Title II before the enactment of Title IV-E continue to exist.

(2) The Secretary considers any student loan fund established under Title IV-E to include the assets of an institution's student loan fund established under Title II.

*(c) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(d) Provisions in these regulations that refer to "loans" or "student loans" apply to all loans made under Title IV-E of the HEA or Title II of the National Defense Education Act.

(Authority: 20 U.S.C. 1087aa-1087hh; Pub. L. 92-318, sec. 137(d)(1))

§ 674.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Award year
College Work-Study (CWS) Program
Defense loan
Direct loan
Enrolled
Guaranteed Student Loan (GSL) Program
HEA
Income Contingent Loan (ICL) Program
National Defense Student Loan Program
National Direct Student Loan (NDSL) Program
Pell Grant Program
Perkins loan
Perkins Loan Program
PLUS Program
Secretary
SLS Program
Supplemental Educational Opportunity Grant (SEOG) Program

(b) The Secretary defines other terms used in this part as follows:

Default: The failure of a borrower to make an installment payment when due or to comply with other terms of the promissory note or written repayment agreement.

Default rate: Represented as a fraction:

$$\frac{\text{Defaulted principal amount outstanding}}{\text{Matured loans}}$$

Defaulted principal amount outstanding: (1) The total loan amount borrowed from an institution's Fund that has reached the repayment stage on those loans that are—

(i) Repayable monthly and in default at least 120 days; or

(ii) Repayable less frequently and in default at least 180 days; minus

(2) That portion of these loans that have been—

(i) Repaid or cancelled;

(ii) Referred to the Secretary;

(iii) Assigned to the Secretary;

(iv) Discharged in bankruptcy; and

(v) Subject to a satisfactory written repayment agreement with which the borrower is currently in compliance.

*_Expected family contribution (EFC):_ The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

Federal capital contribution (FCC): Federal funds allocated or reallocated to an institution for deposit into the institution's Fund under section 462 of the HEA.

*_Financial need:_ The difference between a student's cost of attendance and his or her EFC.

*_Full-time student:_ An enrolled student who is carrying a full-time academic workload (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarters system.

(2) 24 semester hours or 38 quarter hours per academic year for an institution using credit hours but not using a

semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

Fund (Perkins Loan Fund): A fund established and maintained according to § 674.8.

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic workload as determined by the institution according to its own standards and practices.

Half-time undergraduate student: An enrolled undergraduate student who is carrying a half-time academic workload, as determined by the institution, which amounts to at least half the workload of a full-time student. However, the institution's half-time standards must equal or exceed the equivalent of one or more of the following minimum requirements:

(1) 6 semester hours or 6 quarter hours per academic term for an institution using a standard semester, trimester, or quarter system.

(2) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system; or the prorated equivalent for a program of less than one year.

(3) 12 clock hours per week for an institution using clock hours.

(4) 12 hours of preparation per week for a student enrolled in a program of study by correspondence. Regardless of the workload, no student enrolled solely in correspondence study is considered more than half-time.

Initial grace period: That period which immediately follows a period of enrollment and immediately precedes the date of the first required repayment on a loan. This period is generally nine months for Perkins loans, Defense loans, and Direct loans made before October 1, 1980, and six months for other Direct loans.

**Institution of higher education (institution):* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

Institutional capital contribution (ICC): Institutional funds contributed to establish or maintain a Fund.

Matured loans: The total principal amount of all loans made to students from an institution's Fund minus the principal amount of loans made from the institution's Fund to students who—

(1) Are enrolled as at least half-time students; or

(2) Are still in their first grace period.

**Need-based employment:* Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

Payment period: A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

Post-deferment grace period: That period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Student loan: For this part means a Direct Loan, Defense Loan, or a Perkins Loan.

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

(Authority: 20 U.S.C. 1087aa–1087hh)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 52580, Dec. 28, 1988]

*§ 674.3 Application.

(a) To participate in the Perkins Loan Program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation or reallocation of the Perkins Loan Program funds under section 462 of the HEA.

(Authority: 20 U.S.C. 1087bb)

§ 674.4 Allocation and reallocation.

(a) The Secretary allocates Federal capital contributions to institutions participating in the Perkins Loan program in accordance with section 462 of the HEA.

(b) The Secretary reallocates Federal capital contributions to institutions participating in the Perkins Loan program in a manner that best carries out the purpose of section 462 of the HEA.

(c) As used in section 462 of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.

(2) Business.

(3) Trade/Technical.

(4) Art Schools.

(5) Other Proprietary Institutions.

(6) Non-Proprietary Institutions.

(d) *Payment to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(Authority: 20 U.S.C. 1087bb)

§§ 674.5—674.7 [Reserved]

§ 674.8 Program participation agreement.

To participate in the Perkins Loan program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR Part 668. The agreement further specifically provides, among other things, that—

(a) The institution shall establish and maintain a Fund and shall deposit unto the Fund-

(1) FCC received under this subpart;

(2) ICC equal to at least one-ninth of the FCC described in paragraph (a)(1) of this section;

(3) Payments of principal, interest, late charges and collection costs on loans from the Fund;

(4) Payments to the institution as the result of loan cancellations under section 465(b) of the Act;

(5) Any other earnings on assets of the Fund, including the interest earnings of the funds listed in paragraphs (a)(1) through (4) of this section net of bank charges incurred with regard to Fund assets deposited in interest-bearing accounts; and

(6) Proceeds of short-term no-interest loans made to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for—

(1) Making loans to students;

(2) Administrative expenses as provided for in § 674.18(b);

(3) Capital distributions provided for in section 466 of the Act;

(4) Litigation costs (see §674.47);

(5) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and late charges on a loan made from the Fund (see § 674.47); and

(6) Repayment of any short-term, no-interest loans made to the Fund by the institution in anticipation of collections or receipt of FCC.

(c) The institution shall submit an annual report to the Secretary containing information about loans in default—

(1) 120 days or more for loans repayable in monthly installments; or

(2) 180 days or more for loans repayable in less frequent installments.

(d)(1) If an institution determines not to service or collect a loan, the institution may assign its rights to the loan to the United States without recompense at the beginning of a repayment period; or

(2) If a loan is in default despite due diligence on the part of the institution in collecting the loan, the institution may assign its rights to the loan to the United States without recompense.

(e) To assist institutions in collecting outstanding loans, the Secretary provides to an institution the names and addresses of borrowers or other information relevant to collection which is available to the Secretary.

(f) The institution shall provide the loan information required by section 463A of the HEA to a borrower.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 1087cc, 1087cc-1, 1094)

[52 FR 45747, Dec. 1, 1987, as amended at
FR 49147, Dec. 6, 1988]

§ 674.9 Student eligibility.

A student at an institution of higher education is eligible to receive a loan under the Perkins Loan program for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution;

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order-

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members;

(d) Has received for that award year, if an undergraduate student—

(1) A SAR as a result of applying for a grant under the Pell Grant Program; or

(2) A preliminary determination of eligibility or ineligibility for a Pell Grant by the institution's financial aid administrator after applying for a SAR with a Pell Grant Processor; and

(e) Is willing to repay the loan. Failure to meet payment obligations on a previous loan, including a loan discharged in bankruptcy, is evidence that the student is unwilling to repay the loan.

(Authority: 20 U.S.C. 1087dd and 1091)

§ 674.10 Selection of students for loans.

(a)(1) An institution shall make loans under this part reasonably available, to the extent of available funds, to all students eligible under § 674.9 but shall give priority to those students with exceptional financial need.

(2) The institution shall define exceptional financial need for the purpose of the priority described in paragraph (a)(1) of this section and shall develop procedures for implementing that priority.

(b) If an institution's allocation of FCC is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall, consistent with the requirements of paragraph (a) of this section, award a reasonable proportion of its allocation to those students.

(c) The institution shall establish selection procedures and these procedures must be—

(1) In writing;

(2) Uniformly applied; and

(3) Maintained in the institution's files.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 1087cc and 1087dd)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.11 [Reserved]

§ 674.12 Loan maximums.

The cumulative maximum amount of Defense Loans, Direct loans and Perkins loans an eligible student may borrow is—

(a) $4,500 for a student who has not completed 2 academic years of study toward a bachelor's degree;

(b) $9,000 for a student who has completed 2 academic years of study toward a bachelor's degree and has achieved third-year status but has *not* received the degree; and

(c) $18,000 for study toward a professional or graduate degree.

(d) The maximum amounts listed in paragraphs (a), (b) and (c) of this section include any amount borrowed previously under Title IV-E of the HEA at any institution, regardless of any amounts that may have been repaid to the Fund at any institution.

(Authority: 20 U.S.C. 1087dd)

§ 674.13 Reimbursement to the Fund.

(a) The Secretary requires an institution to reimburse its Fund in an amount equal to that portion of the outstanding balance of—

(1) A loan disbursed by the institution to a borrower in excess of the amount that the borrower was eligible to receive, as determined on the basis of information the institution had, or should have had, at the time of disbursement; or

(2) Except as provided in paragraph (b) of this section, a defaulted loan with regard to which the institution failed—

(i) To record or retain the loan note in accordance with the requirements of this part;

(ii) To record advances on the loan note in accordance with the requirements of this part; or

(iii) To exercise due diligence in collecting in accordance with the requirements of this part.

(b) The Secretary does not require an institution to reimburse its Fund for the portion of the outstanding balance of a defaulted loan described in paragraph (a)(2) of this section—

(1) That the institution—

(i) Recovers from the borrower or endorser; or

(ii) Demonstrates, to the Secretary's satisfaction, would not have been collected from the borrower or endorser even if the institution complied in a timely manner with the due diligence requirements of Subpart C of this part; or

(2) On which the institution obtains a judgment.

(c) An institution that is required to reimburse its Fund under paragraph (a) of this section shall also reimburse the Fund for the amount of the administrative cost allowance claimed by the institution for that portion of the loans to be reimbursed.

(d) An institution that reimburses its Fund under paragraph (a) of this section thereby acquires for its own account all the right, title and interest of the Fund in the loan for which reimbursement has been made.

(Authority: 20 U.S.C. 1087dd-1087hh)

§ 674.14 Overaward.

*(a) *Overaward prohibited.* (1) An institution may only award or disburse a Direct loan or a Perkins loan to a stu-

dent if that loan, combined with the other resources the student receives, does note exceed the student's financial need.

(2) When awarding and disbursing a Direct loan or a Perkins loan to a student, the institution shall take into account those resources it—

(i) Can reasonable anticipate at the time it awards loan funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the loan amount, and the total resources including the loan exceed the student's need, the overaward is the amount that exceeds need.

*(b) *Resources.* (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any—

(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a su stitute for a student's EFC. Howeve if the sum of the loan amounts r ceived exceeds the student's EFC, th excess is a resource.

*(c) *Treatment of resources in exce of need.* An institution shall take th following steps if it learns that a stu dent has received additional resourc not included in the calculation o Direct or Perkins Loan eligibility tha would result in the student's total resources exceeding his or her financia need by more than $200:

(1) The institution shall decid whether the student has increased financial need that was unanticipate when it awarded financial aid to the student. If the student demonstrate increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $200 after the institution takes the steps required in paragraphs (c) (1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $200 as an overpayment.

(d) *Liability for and recovery of overpayments.* (1) A student is liable for any overpayment of loan advances made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan fund even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by making a reasonable effort to contact the student and re-

cover the overpayment. The Secretary regards a written demand to the student for repayment of the overawarded funds, with notice that failure to make that repayment will render the student ineligible for further Title IV aid, constitute such a reasonable effort.

(Authority: 20 U.S.C. 1087dd, 1087hh)

[54 FR 52580, Dec. 28, 1988]

*§ 674.15 Coordination with BIA grants.

(a) To determine the amount of a loan for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA/eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1087dd)

§ 674.16 Making and disbursing loans.

(a)(1) Before an institution makes its first disbursement to a student, the student shall sign the promissory note and the institution shall provide the student with the following information:

(i) The name of the institution and the address to which communications and payments should be sent.

(ii) The principal amount of the loan.

(iii) The stated interest rate on the loan.

(iv) The yearly and cumulative maximum amounts that may be borrowed.

(v) An explanation of when repayment of the loan will begin and when the borrower will be obligated to pay interest that accrues on the loan.

(vi) The minimum and maximum repayment terms which the institution may impose and the minimum monthly repayment required.

(vii) A statement of the total cumulative balance owed by the student to that institution, and an estimate of the monthly payment amount needed to repay that balance.

(viii) Special options the borrowers may have for loan consolidation or other refinancing of the loan.

(ix) The borrower's right to prepay all or part of the loan, at any time, without penalty, and a summary of the circumstances in which repayment of the loan or interest that accrues on the loan may be deferred or canceled including a brief notice of the Department of Defense program for repayment of loans on the basis of specified military service.

(x) A definition of default and the consequences to the borrower including a statement that the default may be reported to a credit bureau or credit reporting agency.

(xi) The effect of accepting the loan on the eligibility of the borrower for other forms of student assistance.

(xii) The amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of such charges from the proceeds of the loan or paid separately by the borrower.

(xiii) Any cost that may be assessed on the borrower in the collection of the loan including late charges and collection and litigation costs.

(2) The institution shall provide the information in paragraph (a)(1) of this section to the borrower in writing—

(i) As part of the written application material;

(ii) As part of the promissory note; or

(iii) On a separate written form.

(b)(1) Except as provided in paragraphs (c) and (f) of this section, an institution shall advance in each payment period a portion of a loan awarded for a full academic year.

(2) The institution shall determine the amount advanced each payment period by the following fraction:

$$\frac{\text{Loan amount}}{\text{N}}$$

Where Loan Amount = the total loan awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may advance funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

(c) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may advance loan funds to the student for those uneven costs.

(d) The institution may advance the loan proceeds to the borrower directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid. In either case, the borrower must sign for each advance of funds on the promissory note.

(e)(1) An institution may not advance a loan to a student for a payment period until the student is enrolled for that period.

(2) Subject to the requirements of paragraph (f) of this section—

(i) An institution may advance loan proceeds directly to an enrolled student no more than 10 days before the first day of classes of a payment period; and

(ii) An institution may advance loan proceeds by crediting an enrolled student's account no more than 3 weeks before the first day of classes of a payment period.

(f)(1) The institution shall return to the Fund any amount advanced to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(g) Only one advance is necessary if the total amount the institution awards a student for an academic year under the Perkins Loan program is less than $501.

(h) An institutional official may not, without prior approval from the Secretary, obtain a student's power of attorney to endorse any check used to disburse loan funds.

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(Authority: 20 U.S.C. 1987cc, 1087cc-1, 1087dd, 1091 and 1094)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.17 Federal interest in allocated funds—transfer of Fund.

*(a) Funds received by an institution under the Perkins Loan program, including repayments on loans, are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(b)(1) If an institution responsible for a Perkins Loan fund closes or no longer wants to participate in the program, the Secretary directs the institution to take one or more of the following steps to protect the outstanding loans and the Federal interest in that Fund:

(i) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act.

(ii) The transfer of the outstanding loans to another institution.

(iii) The transfer of the outstanding loans to the Department of Education.

(2) An institution that transfers outstanding loans under this paragraph relinquishes its interest in those loans.

(3) If the Secretary directs the transfer of outstanding loans to a second institution, the transferee institution may deposit the collections on those loans in its own Fund. The Secretary considers that portion of the collections on transferred loans corresponding to the transferor institution's ICC to become part of the transferee institution's ICC.

(4) If the Secretary decides to transfer outstanding loans to another institution, and more than one institution offers to collect the outstanding loans, the Secretary directs that the loans be transferred to one or more of the competing institutions on the basis of—

(i) The offering institution's demonstrated loan collection capability; and

(ii) The number of students of the transferor institution expected to enroll in the offering institution.

(5) The Secretary does not take an audit exception against a transferee institution on account of actions or omissions of the transferor institution in the administration of its Fund. The transferee institution shall segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the transferor institution's program.

(Authority: 20 U.S.C. 1087cc, 1087ff), and (1087hh)

§ 674.18 Use of funds.

(a) *General.* An institution shall deposit the funds it receives under the Perkins Loan program into its Fund. It may use these funds only for making loans and the other activities specified in § 674.8(b).

(b) *Administrative cost allowance.* (1) An institution participating in the Perkins Loan program for an award year is entitled to an administrative cost allowance if it advances funds to students in that year under the Perkins Loan program.

(2) For any award year, the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG and Perkins Loan programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(2) of this section, the institution's CWS expenditures under the community service learning program (34 CFR 675.28), and the amount of NDSLs and Perkins loans that it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its cost of administering the CWS, SEOG and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistant General Provisions regulations, 34 CFR Part 668.

(5) An institution shall charge any administrative costs against its Fund during the same award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1087cc, 1087dd, and 1096)

§ 674.19 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its Perkins Loan program, an institution shall establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse funds to students.

(2)(i) A separate bank account for Federal funds is not required, except as provided in paragraph (b) of this section.

(ii) An institution shall notify any bank in which it deposits Federal funds of the accounts into which those funds are deposited by—

(A) Ensuring that the name of the account clearly discloses the fact that Federal funds are deposited in the account; or

(B) Notifying the bank, in writing, of the names of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(3)(i) The institution shall ensure that the cash balances of the accounts into which it deposits Perkins Loan Fund cash assets do not fall below the amount of Fund cash assets deposited in those accounts but not yet expended on authorized purposes in accordance with applicable Title IV HEA program requirements, as determined from the records of the institution.

(ii) If the cash balances of the accounts at any time fall below the amount described in paragraph (a)(3)(i) of this section, the institution is deemed to make any subsequent deposits into the accounts of funds derived from other sources with the intent to restore to that amount those Fund assets previously withdrawn from those accounts. To the extent that these institutional deposits restore the amount previously withdrawn, they are deemed to be Fund assets.

(b) *Account for Perkins Loan Fund.* (1) An institution must maintain all the cash of its Perkins Loan Fund in a separate bank account that contains no other funds if the Secretary determines that the institution's accounting system and internal controls do not—

(i) Meet the requirements of paragraph (c) or (d) of this section;

(ii) Identify the cash balance of the Perkins Loan Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Secretary makes that determination on the basis of an audit examination or as a result of a program review.

(3) The separate bank account must be identified as the institution's Federal Fund account and must contain all the cash of the institution's Perkins Loan Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, loan cancellation payments, and any earnings of the Fund including interest.

(4) An institution shall ensure that all the cash in its Perkins Loan Fund is—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(5) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(c) *Deposit of ICC into Fund.* An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

(d) *Records and reporting.* (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution shall maintain on file all loan applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS programs (FISAP).

(5) The institution shall maintain all records supporting its application for funds under this part.

(e) *Retention of records*—(1) *Records.* Each institution shall keep intact and accessible records pertaining to the application for and receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

(2) *Loan records.* (i) An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal, interest, late charges and collection costs.

(ii) This history must also show the date, nature, and result of each contact with the borrower or endorser in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower and endorser, except bills, routine overdue notices, and routine form letters.

•(3) *Period of retention.* (i) Except for loan records and records of expenditures questioned in audits or Departmental program reviews, an institution shall keep records for an award year for five years after it submits its FISAP.

(ii) An institution shall retain repayment records, including cancellation and deferment requests, for at least five years from the date on which a loan is assigned to the Department of Education, canceled or repaid.

(iii) An institution shall keep records on any claim or expenditure questioned by Federal audit or Department program review until resolution of any audit questions raised with regard to that transaction.

(4) *Manner of retention of records.* (i) An institution shall keep the original promissory notes and repayment schedules in a locked, fireproof container until—

(A) The loans are satisfied; or

(B) The original documents are needed in order to enforce the loan obligation.

(ii) The institution shall retain certified true copies of documents released for enforcement of the loan.

(iii) After the loan obligation is satisfied, the institution shall return the original notes marked "paid in full" to the borrower.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, Direct, and Perkins Loans.

•(v) An institution may keep the records required in this section on microforms or it may keep its records in computer format. If an institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

(vi) Only authorized personnel may have access to the loan documents.

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(Authority: 20 U.S.C. 1087cc, 1087hh, 1094, and 1232f)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.20 Compliance with equal credit opportunity requirements.

(a) In making a loan, an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202).

(b) The Secretary considers the Perkins Loan program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 1087aa-1087hh)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

Subpart B—Terms of Loans

SOURCE: 52 FR 45754, Dec. 1, 1987, unless otherwise noted.

§ 674.31 Promissory note.

(a) *Promissory note.* (1) An institution may use only a promissory note which the Secretary has approved.

(2) The Secretary has approved the promissory notes set forth in the Ap-

pendices to this part. The institution shall not change the substance of the notes set forth in the Appendices without the Secretary's approval.

(3)(i) The institution shall print the note on one page, front and back; or

(ii) The institution may print the note on more than one page if—

(A) The note requires the signature of the borrower and/or any endorser on each page; or

(B) Each page of the note contains both the total number of pages in the complete note as well as the number of each page, e.g., page 1 of 4, page 2 of 4, etc.

(b) *Provisions of the promissory note*—(1) *Interest.* The promissory note must state that—

(i) The rate of interest on the loan is 5 percent per annum on the unpaid balance; and

(ii) No interest shall accrue before the repayment period begins, during certain deferment periods as provided by this subpart, or during the grace period following those deferments.

(2) *Repayment.* (i) Except as otherwise provided in § 674.32, the promissory note must state that the repayment period—

(A) For Direct Loans made on or after October 1, 1980, begins 6 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(B) For Perkins Loans and Direct Loans made before October 1, 1980, begins 9 months after the borrower ceases to be at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(C) May begin earlier at the borrower's request; and

(D) May vary because of minimum monthly repayments (see § 674.33(b)), extensions of repayment (see § 674.33(c)), or deferments (see §§ 674.34, 674.35 and 674.36); and

(ii) The promissory note must state that the borrower shall repay the loan—

(A) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(B) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Secretary for approval, and the Secretary approves it.

(3) *Cancellation.* The promissory note must state that the unpaid principal, interest, late charges and collection costs on the loan are cancelled upon the death or permanent disability of the borrower.

(4) *Prepayment.* The promissory note must state that—

(i) The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to reduce the original loan amount and not consider these amounts to be prepayments;

(iii) If the borrower repays amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be treated as prepayments; and

(iv) If, in an academic year other than that described in paragraph (b)(4)(iii) of this section, a borrower repays more than the amount due for any repayment period, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) *Late charge.* (i) An institution shall state in the promissory note that the institution will assess a late charge if the borrower does not—

(A) Repay all or part of a scheduled repayment when due; or

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(ii)(A) The amount of the late charge on a Perkins Loan or a Direct Loan made to cover the cost of attendance for a period of enrollment that began on or after January 1, 1986 must be determined in accordance with § 674.43(b) (2), (3) and (4).

(B) The amount of the late or penalty charge on a Direct loan made for periods of enrollment that began before January 1, 1986 may be—

(*1*) For each overdue payment on a loan payable in monthly installments, a maximum monthly charge of $1 for the first month and $2 for each additional month.

(*2*) For each overdue payment on a loan payable in bimonthly installments, a maximum bimonthly charge of $3.

(*3*) For each overdue payment on a loan payable in quarterly installments, a maximum charge per quarter of $6. (See Appendix E of this part)

(iii) The institution may—

(A) Add the late charge to the principal the day after the scheduled repayment was due; or

(B) Include it with the next scheduled repayment after the borrower receives notice of the late charge.

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement unless—

(i) The borrower is a minor; and

(ii) Under applicable State law, a note signed by a minor would not create a binding obligation.

(7) *Assignment.* The promissory note must state that a note may only be assigned to—

(i) The United States or an institution approved by the Secretary; or

(ii) An institution to which the borrower has transferred if that institution is participating in the Perkins Loan program.

(8) *Acceleration.* The promissory note must state that an institution may demand immediate repayment of the entire loan, including any late charges, collection costs and accrued interest, if the borrower does not—

(i) Make a scheduled repayment on time; or

(ii) File cancellation or deferment form(s) with the institution on time.

(9) *Cost of collection.* The promissory note must state that the borrower shall pay all attorney's fees and other loan collection costs and charges.

(10) *Disclosure of information.* The promissory note must state that if the borrower defaults on the loan and the loan is referred or assigned to the Secretary, the Secretary may disclose to a credit bureau organization—

(i) That the borrower has defaulted on the loan; and

(ii) Any other relevant information.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 1087dd)

(52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988)

§ 674.32 Special terms: loans to less than half-time student borrowers.

(a) The promissory note used with regard to loans to borrowers enrolled on a less than half-time basis must state that the repayment period begins—

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of—

(i) Nine months from the date the loan was made, or

(ii) The end of a none-month period that includes the date the loan was made and began on the date the borrower ceased enrollment as at least a regular half-time student at an institution of higher education or comparable institution outside the U.S. approved for this purpose by the Secretary.

(b) The note must otherwise conform to the provisions of § 674.31.

(Authority: U.S.C. 1087dd)

§ 674.33 Repayment.

(a) *Repayment Plan.* (1) The institution shall establish a repayment plan before the student ceases to be at least a half-time student.

(2) If the last scheduled payment would be $15 or less the institution may combine it with the next-to-last repayment.

(3) The institution shall apply any payment on a loan in the following order:

(i) Collection costs.

(ii) Late charges.

(iii) Accured interest.

(iv) Principal.

(b) *Minimum repayment rates—(1) Rounding monthly repayment amounts.* If the monthly repayment for all loans made to a borrower by an institution is not a multiple of $5, the institution may round that payment to the next highest dollar amount that is a multiple of $5.

(2) *Minimum monthly repayment of Defense loans from one institution.* An institution may require a borrower of a Defense loan to pay a $15 minimum monthly repayment if—

(i) The monthly repayment of principal and interest for a 10-year repayment period is less than $15 a month; and

(ii) The promissory note includes a $15 minimum monthly repayment provision.

(3) *Minimum monthly repayment of Defense loans from more than one institution.* If a borrower has received Defense loans from more than one institution and—

(i) Only one institution exercises $15 option when the monthly repayment would otherwise be less than $15, that institution receives the difference between $15 and the repayment owed to the other institution; or

(ii) Each institution exercises the $15 minimum option the $15 monthly payment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(4) *Minimum monthly repayment of Direct loans and Perkins loans from one Institution.* The institution may require a borrower to pay a $30 monthly repayment on Direct loans or Perkins loans if—

(i) The monthly repayment of principal and interest for a 10-year repayment period is less than $30 a month; and

(ii) The promissory note includes a $30 minimum monthly repayment provision.

(5) *Minimum monthly repayment of Direct loans and Perkins loans from more than one institution.* If a borrower has received Direct loans or Perkins loans from more than one institution and—

(i) Only one institution exercises the $30 option when the monthly repayment would otherwise be less than $30 that institution receives the difference between $30 and the repayment owed to the other institution; or

(ii) Each institution exercise's the $30 minimum option, the $30 monthly payment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(6) *Minimum monthly repayment of both Defense and Direct or Perkins loans from one or more institutions.* If a borrower has received both a Defense loan and a Direct or Perkins loan, the following rules apply:

(i) If the total of the monthly repayments for a Defense, Direct and a Perkins loan is at least $30, no institution may exercise a minimum repayment option, even if the Defense loan repayment is less than $15 or the Direct or Perkins loan repayment is less than $30.

(ii) If the total of the monthly repayments would otherwise be less than $30 for the Defense, Direct, and Perkins loans, an institution may exercise the minimum repayment options applicable to the respective loans. The maximum total monthly repayment, however, may not exceed $30 a month.

(iii) If the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month. However, $15 may be attributed to the Defense loan only if the institution exercises the minimum option on the Defense loan.

(7) *Minimum monthly repayment of loans from one institution with different interest rates.* (i) If a borrower has received loans with different interest rates from the same institution, and the total monthly repayment is at least $30 for the loans, the institution may not exercise the minimum monthly payment on any loan.

(ii) If the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than $30, the institution may exercise the $30 minimum payment option, providing it is in one of the promissory notes, and the institution divides the repayment between the accounts in proportion to the amount of principal advanced under each loan.

(8) *Differing grace periods and deferments.* If the borrower has received loans with different grace periods and deferments, the institution shall treat each note separately, and the borrower shall pay the applicable minimum monthly payment for a loan that is not in the grace or deferment period.

(9) *Hardship.* The institution may reduce the borrower's scheduled repayments for a period of not more than one year if—

(i) It determines that the borrower is unable to make the scheduled repayments due to hardship (see § 674.33(c)); and

(ii) The borrower's scheduled repayment is the $30 minimum monthly repayment described in paragraph (b) of this section.

(10) The institution shall determine the minimum repayment amount under paragraph (b)(6) of this section for loans with repayment installment intervals greater than one month by multiplying the amounts in paragraph (b)(6) by the number of months in the installment interval.

(c) *Extension of repayment period*—(1) *Hardship.* The institution may extend a borrower's repayment period due to hardship.

(2) *Low-income individual.* (i) For Direct and Perkins loans made on or after October 1, 1980. The institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines that the borrower will be a low-income individual during the course of the repayment period. The term "low-income individual" means an individual whose family's taxable income for the preceding calendar year did not exceed 150 percent of the poverty level established by the Bureau of the Census for that year. The individual's family includes the borrower and any spouse or legal dependents.

(ii) The institution may adjust the repayment schedule to reflect the income of that individual.

(iii) The institution shall review the borrower's status annually. If the borrower is no longer a low-income individual, the institution shall appropriately adjust the repayment period.

(3) Interest continues to accrue during any extension of a repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, sec. 137(d) of Pub. L. 92-318)

§ 674.34 Deferment of repayment—Perkins loans.

(a) The borrower may defer repayment on a Perkins Loan during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see § 674.56);

(2) On full-time active duty as a member of the National Oceanic and Atmospheric Administration Corps;

(3) A Peace Corps volunteer,

(4) A volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs);

(5) A full-time volunteer in service which the Secretary has determined is

comparable to service in the Peace Corps or under the Domestic Volunteer Act of 1973. The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes and allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(6) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a dependent who is so disabled. As used in this paragraph—

(i) "Temporarily totally disabled", with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(ii) "Temporarily totally disabled", with regard to a disabled spouse or other dependent of a borrower, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is one which—

(i) Requires the borrower to hold at least a baccalaureate degree before beginning the internship; and

(ii)(A) A State licensing agency requires an individual to complete as a prerequisite for certification for professional practice or service; or

(B) Is a part of an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(3) To qualify for an internship deferment as provided in paragraph (c)(2)(ii)(A) of this section, the borrower must provide the institution with the following certifications:

(i) A statement from an official of the appropriate State licensing agency that successful completion of the internship program is a prerequisite for its certification of the individual for professional service or practice.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) That a baccalaureate degree must be attained in order to be admitted into the internship program;

(B) That the borrower has been accepted into its internship program; and

(C) The anticipated dates on which the borrower will begin and complete the program.

(4) To qualify for an internship deferment as provided in paragraph (c)(2)(ii)(B) of this section, the borrower must provide the institution with a statement from an authorized official of the internship program certifying that—

(i) A baccalaureate degree must be attained in order to be admitted into the internship program;

(ii) The borrower has been accepted into its internship program; and

(iii) The internship of residency program in which the borrower has been accepted leads to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training.

(e) The borrower need not repay principal, and interest does not accrue, for a period not in excess of six months—

(1) During which the borrower is—

(i) Pregnant, caring for a newborn baby, or caring for a child immediately after placement of the child through adoption; and

(ii) Not attending an eligible institution of higher education or gainfully employed; and

(2) That begins not later than six months after a period in which the borrower was at least a half-time student at an eligible institution.

(f) The borrower need not repay principal, and interest does not accrue, for a period not in excess of one year during which the borrower—

(1) Is a mother of preschool age children;

(2) Has just entered or reentered the work force; and

(3) Is being compensated at a rate which is not more than $1.00 over the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(g) The institution shall not include the deferment periods described in paragraphs (b), (c), (d), (e), and (f) of this section and the period described n paragraph (h) of this section when determining the 10-year repayment period.

(h) The borrower need not repay principal, and interest does not accrue, until six months after completion of any period during which the borrower s in deferment under paragraphs (b), c), (d), (e), and (f) of this section.

(i) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the nstitution determines this is necesary to avoid hardship to the borrower see § 674.33(c)).

Approved by the Office of Management nd Budget under control number 1840-535)

Authority: 20 U.S.C. 1087dd)

52 FR 45754, Dec. 1, 1987, as amended at 53 R 49147, Dec. 6, 1988)

674.35 Deferment of repayment—Direct loans made on or after October 1, 1980.

(a) The borrower may defer repayent on a Direct Loan made on or after October 1, 1980, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need no repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see § 674.56);

(2) A Peace Corps volunteer;

(3) As volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs);

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Act of 1973. The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes an allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(5)(i) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a spouse who is so disabled.

(ii) "Temporarily totally disabled" with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(iii) "Temporarily totally disabled" with regard to a disabled spouse, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is an internship—

(i) That requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(ii) That the State licensing agency requires the borrower to complete before certifying the individual for professional practice or service.

(3) To qualify for an internship deferment, the borrower shall provide to the institution the following certifications:

(i) A statement from an official o the appropriate State licensing agenc that the internship program meets th provisions of paragraph (d)(2) of thi section; and

(ii) A statement from the organiz tion with which the borrower is under taking the internship program certify ing—

(A) The acceptance of the borrowe into its internship program; and

(B) The anticipated dates on which the borrower will begin and complet the program.

(e) An institution may defer pay ments of principal and interest, but in terest shall continue to accrue, if the institution determines this is neces sary to avoid hardship to the borrower (see § 674.33)(c)).

(f) The institution shall not include the deferment periods described in paragraphs (b), (c), and (d) of this sec tion and the period described in para graph (g) of this section when deter mining the 10-year repayment period

(g) No repayment of principal or in terest begins until six months after completion of any period during which the borrower is in deferment under paragraphs (a), (b), and (c) of this section.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 1087dd)

(52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988)

§ 674.36 Deferment of repayment—Direct loans made before October 1, 1980 and Defense loans.

(a) A borrower may defer repay ment—

(1) On a Direct loan made before Oc tober 1, 1980 during the periods de scribed in paragraphs (b) through (e) of this section; and

(2) On a Defense loan, during the periods described in paragraphs (b) through (f) of this section.

(b)(1) A borrower need not repay principal, and interest does not accrue during a period after the commence ment or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) A borrower need not repay principal, and interest does not accrue for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines or Coast Guard (see § 674.56);

(2) A Peace Corps volunteer; or

(3) A volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs).

(d) The institution shall exclude the deferment periods described in paragraphs (b) (1) and (2) of this section when determining the 10-year repayment period.

(e) An institution may permit the borrower to defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33(c)).

(f) The institution may permit the borrower to defer payment of principal and interest, but interest shall continue to accrue, on a Defense loan for a total of 3 years after the commencement or resumption of the repayment period on a loan, during which he or she is attending an institution of higher education as a less-than-half-time regular student.

(Authority: 20 U.S.C. 425, 1087dd)

§ 674.37 Deferment procedures.

(a)(1) To qualify for a deferment on a loan, a borrower shall submit to the institution to which the loan is owed a written request for a deferment with documentation required by the institution, by the date that the institution establishes.

(2) If the borrower fails to meet the requirements of paragraph (a) (1) of this section, the institution may declare the loan to be in default, and may accelerate the loan.

(b)(1) The institution may grant a deferment to a borrower after it has declared a loan to be a default.

(2) As a condition for a deferment under this paragraph, the institution—

(i) Shall require the borrower to execute a written repayment agreement on the loan; and

(ii) May require the borrower to pay immediately some or all of the amounts previously scheduled to be repaid before the date on which the institution determined that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs.

(c) If the information supplied by the borrower demonstrates that for some or all of the period for which a deferment is requested, the borrower had retained in-school status or was within the initial grace period on the loan, the institution shall—

(1) Redetermine the date on which the borrower was required to commence repayment on the loan;

(2) Deduct from the loan balance any interest accrued and late charges added before the date on which the repayment period commenced, as determined in paragraph (c)(1) of this section; and

(3) Treat in accordance with paragraph (b) of this section, the request for deferment for any remaining portion of the period for which deferment was requested.

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(Authority: 20 U.S.C. 425, 1087dd)

(52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988)

§ 674.38 Postponement of loan repayments in anticipation of cancellation.

(a) An institution shall postpone loan repayments for a 12-month period if the borrower—

(1) Notifies the institution in writing that he or she is teaching or engaged in other services that qualify for loan cancellation under § 674.55, 674.56 or 674.57.

(2) Submits a statement signed by a responsible official in the military, agency, or school employing the borrower, specifying that the borrower is so employed. The statement must describe the borrower's job, list the period of employment, and state whether the job is full- or part-time.

(b) If a borrower has received Defense, Direct, and Perkins loans and is eligible for cancellation benefits on only one, the institution may postpone only repayments on the loan for which cancellation is available.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

(52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988)

§ 674.39 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received Defense, Direct, and Perkins loans and only one can be cancelled, the amount due on the uncancelled loan is the amount established in § 674.31(b) (2), loan repayment terms; § 674.33(b), minimum repayment rates; or § 674.33(c), extension of repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

Subpart C—Due Diligence

Source: 52 FR 45555, Nov. 30, 1987, unless otherwise noted.

§ 674.41 Due diligence—general requirements.

(a) *General.* Each institution shall exercise due diligence in collecting loans by complying with the provisions in this subpart. In exercising this responsibility, each institution shall, in addition to complying with the specific provisions of this subpart—

(1) Keep the borrower informed, on a timely basis, of all changes in the program that affect his or her rights or responsibilities; and

(2) Respond promptly to all inquiries from the borrower or any endorser.

(b) *Due diligence with regard to endorser.* If a borrower does not respond satisfactorily to the final demand letter required in § 674.43(c)(2), an institution shall, in addition to pursuing the borrower, pursue recovery of the debt from any endorser using the steps described in this subpart.

(c) *Coordination of information.* An institution shall ensure that information available in its offices (including the admissions, business, alumni, placement, financial aid and registrar's offices) is provided to those offices responsible for billing and collecting loans, in a timely manner, as needed to determine—

(1) The enrollment status of the borrower;

(2) The expected graduation or termination date of the borrower;

(3) The date the borrower withdraws, is expelled or ceases enrollment on at least a half-time basis; and

(4) The current name, address, telephone number and Social Security number of the borrower.

(Authority: 20 U.S.C. 424, 1087cc)

§ 674.42 Contact with the borrower.

(a) *Exit interview.* (1) An institution shall conduct an exit interview with each borrower before he or she leaves the institution. If an individual interview is not feasible, the institution may conduct a group interview. During the interview the institution shall restate for the borrower the terms and outstanding balance of the loan held by the institution, and the borrower's duty to repay the loan in accordance with the repayment schedule. The institution shall explain to the borrower the consequences of defaulting including, at a minimum, possible referral to a collection firm, reporting to a credit bureau, and litigation. Furthermore, the institution shall explain the borrower's rights and responsibilities under the loan, including the following:

(i) The borrower's responsibility to inform the institution immediately of any change of name, address, telephone number, or Social Security number.

(ii) The borrower's right to deferment, cancellation or postponement of repayment, and the procedures for filing for those benefits.

(iii) The borrower's responsibility to contact the institution in a timely manner, before the due date of any payment he or she cannot make.

(2) An institution shall disclose the following information during the exit interview, and shall include it in the promissory note or in another written statement provided to the borrower:

(i) The name and the address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent.

(ii) The name and the address of the party to which payments should be sent.

(iii) The estimated balance owed by the borrower on the loan held by the institution on the date on which the repayment period is scheduled to begin.

(iv) The stated interest rate on the loan.

(v) The repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, and the number, amount, and frequency of required payments.

(vi) An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to prepay all or part of the loan at any time without penalty.

(vii) A description of the charges imposed for failure of the borrower to pay all or part of an installment when due.

(viii) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or the institution to collect on the loan.

(ix) The total of interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

(3) At the time of the exit interview the institution shall—

(i) Have the borrower sign the repayment schedule;

(ii) Provide a copy of the signed promissory note and the signed repayment schedule to the borrower; and

(iii) Retain signed copies of both the note and the repayment schedule in the institution's files.

(4) The institution shall contact a borrower promptly after it determines that the borrower either has not attended an exit interview that he or she was scheduled to attend or has already left the institution, and shall—

(i) Provide the borrower, either in person or by mail the information described in paragraphs (a) (1) and (2) of this section; and

(ii) Provide a copy of the note and two copies of the repayment schedule to the borrower and request that the borrower promptly sign and return one of the schedules to the institution.

(b) *Contact with the borrower during the initial and post deferment grace periods.* (1)(i) For loans with a nine-month initial grace period (loans made before October 1, 1980, and loans made for periods of enrollment beginning after June 30, 1987 to borrowers with no outstanding balance on any Defense, Direct or Perkins loan made to the borrower prior to July 1, 1987, the institution shall contact the borrower three times within the initial grace period.

(ii) For loans with a six-month initial or post deferment grace period (loans not described in paragraph (b)(1)(i) of this section), the institution shall contact the borrower twice during the grace period.

(2)(i) The institution shall contact the borrower for the first time 90 days after the commencement of any grace period. The institution shall at this time remind the borrower of his or her responsibility to comply with the terms of the loan and shall send the borrower the following information:

(A) The total amount remaining outstanding on the loan account, including principal and interest accruing over the remaining life of the loan.

(B) The date and amount of the next required payment.

(ii) The institution shall contact the borrower the second time 150 days after the commencement of any grace period. The institution shall at this time notify the borrower of the date and amount of the first required payment.

(iii) The institution shall contact a borrower with a nine-month initial grace period a third time 240 days after the commencement of the grace period, and shall then inform him or her of the date and amount of the first required payment.

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(Authority: U.S.C. 424, 1087cc, 1087cc-1)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.43 Billing procedures.

(a) The term "billing procedures," as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers when payments are overdue, and to demand payment of overdue amounts. An institution shall use the following billing procedures:

(1) If the institution uses a coupon payment system, it shall send the coupons to the borrower at least 30 days before the first payment is due.

(2) If the institution does not use a coupon system, it shall send to the borrower—

(i) A written notice giving the name and address of the party to which payments are to be sent and a statement of account at least 30 days before the first payment is due; and

(ii) A statement of account at least 15 days before the due date of each subsequent payment.

(b)(1) An institution shall send a first overdue notice within 15 days after the due date for a payment if the institution has not received—

(i) A payment;

(ii) A request for deferment; or

(iii) A request for postponement or for cancellation.

(2) Subject to § 674.47(a), the institution shall assess a late charge for loans made for periods of enrollment beginning on or after January 1, 1986, during the period in which the institution takes any steps described in this section to secure—

(i) Any part of an installment payment not made when due, or

(ii) A request for deferment, cancellation, or postponement of repayment on the loan that contains sufficient information to enable the institution to determine whether the borrower is entitled to the relief requested.

(3) The institution shall determine the amount of the later charge imposed for loans described in paragraph (b)(2) of this section based on either—

(i) Actual costs incurred for actions required under this section to secure the required payment or information from the borrower; or

(ii) The average cost incurred for similar attempts to secure payments or information from other borrowers.

(4) The institution may not require a borrower to pay late charges imposed under paragraph (b)(3) of this section in an amount, for each late payment or request, exceeding 20 percent of the installment payment most recently due.

(5) The institution—

(i) Shall determine the amount of the late or penalty charge imposed on loans not described in paragraph (b)(2) of this section in accordance with § 674.31(b)(5) (See Appendix E); and

(ii) May assess this charge only during the period described in paragraph (b)(2) of this section.

(6) The institution shall notify the borrower of the amount of the charge it has imposed, and whether the institution—

(i) Has added that amount to the principal amount of the loan as of the first day on which the installment was due; or

(ii) Demands payment for that amount in full no later than the due date of the next installment.

(c) If the borrower does not satisfactorily respond to the first overdue notice, the institution shall continue to contact the borrower as follows, until the borrower makes satisfactory repayment arrangements or demonstrates entitlement to deferment, postponement, or cancellation:

(1) The institution shall send a second overdue notice within 30 days after the first overdue notice is sent.

(2) The institution shall send a final demand letter within 15 days after the second overdue notice. This letter must inform the borrower that unless the institution receives a payment or a request for deferment, postponement, or cancellation within 30 days of the date of the letter, it will refer the account for collection or litigation, and will report the default to a credit bureau.

(d) Notwithstanding paragraphs (b) and (c) of this section, an institution may send a borrower a final demand letter if the institution has not within 15 days after the due date received a payment, or a request for deferment, postponement, or cancellation, and if—

(1) The borrower's repayment history has been unsatisfactory, e.g., the borrower has previously failed to make payment(s) when due or to request deferment, postponement, or cancellation in a timely manner, or has previously received a final demand letter; or

(2) The institution reasonably concludes that the borrower neither intends to repay the loan nor intends to seek deferment, postponement, or cancellation of the loan.

(e)(1) An institution that accelerates a loan as provided in § 674.31 (i.e., makes the entire outstanding balance of the loan, including accrued interest and any applicable late charges, payable immediately) shall—

(i) Provide the borrower, at least 30 days before the effective date of the acceleration, written notice of its intention to accelerate; and

(ii) Provide the borrower on or after the effective date of acceleration, written notice of the date on which it accelerated the loan and the total amount due on the loan.

(2) The institution may provide these notices by including them in other written notices to the borrower, including the final demand letter.

(f) If the borrower does not respond to the final demand letter within 30 days from the date it was sent, the institution shall attempt to contact the borrower by telephone before beginning collection procedures.

(g)(1) An institution shall ensure that any funds collected as a result of billing the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

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(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.44 Address searches.

(a) If mail, other than unclaimed mail, sent to a borrower is returned undelivered, an institution shall take steps to locate the borrower. These steps must include—

(1) Reviews of records in all appropriate institutional offices;

(2) Reviews of telephone directories or inquiries of information operators in the locale of the borrower's last known address; and

(3) Use of the Department of Education's skip-tracing service.

(b) If an institution is unable to locate a borrower by the means described in paragraph (a) of this section, it shall—

(1) Use its own personnel to attempt to locate the borrower, employing and documenting efforts comparable to commonly accepted commercial skip-tracing practices; or

(2) Refer the account to a firm that provides commercial skip-tracing services.

(c) If the institution acquires the borrower's address or telephone number through the efforts described in this section, it shall use that new information to continue its efforts to collect on that borrower's account in accordance with the requirements of this subpart.

(d) If the institution is unable to locate the borrower after following the procedures in paragraphs (a) and (b) of this section, the institution shall make reasonable attempts to locate the borrower at least twice a year until—

(1) Litigation to collect the borrower's account is barred under the applicable statute of limitations;

(2) The account is assigned to the United States; or

(3) The account is written off under § 674.47(g).

(Authority: 20 U.S.C. 424, 1087cc)

§ 674.45 Collection procedures.

(a) The term "collection procedures," as used in this subpart, includes that series of more intensive efforts, including litigation as described in § 674.46, to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of the institution's billing procedures. If a borrower does not satisfactorily respond to the final demand letter or the following telephone contact made in accordance with § 674.43(f), the institution shall—

(1) Report the defaulted account to a credit bureau, unless specifically prohibited by State law; and

(2)(i) Use its own personnel to collect the amount due; or

(ii) Engage a collection firm to collect the account.

(b)(1) An institution shall select one or more credit bureaus for its information referrals with due regard for the coverage provided by the bureau or bureaus. An institution may select a bureau which serves—

(i) The areas from which the major portion of its students was drawn; or

(ii) The areas in which all or a major portion of its alumni/ae now reside.

(2) An institution shall report, according to the reporting procedures of the bureau, any changes in account status to the bureau to which it reported the defaulted account, and shall respond promptly and accurately to any inquiry from any bureau regarding the information reported on the loan account.

(c)(1) If the institution, or the firm it engages, pursues collection activity for up to 12 months and does not succeed in converting the account to regular repayment status, or the borrower does not qualify for deferment, postponement, or cancellation on the loan, the institution shall either—

(i) Litigate; or

(ii) Make a second effort to collect the account as follows:

(A) If the institution first attempted to collect the account using its own personnel, it shall, unless specifically prohibited by State law, refer the account to a collection firm.

(B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firm.

(2) If the collection firm retained by the institution does not succeed in placing an account into a repayment status described in paragraph (c)(1) of this section after 12 months of collection activity, the institution shall require the collection firm to return the account to the institution.

(d) If the institution is unable to place the loan in a repayment status described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this section, the institution shall continue to make annual attempts to collect from the borrower until recovery in litigation to collect the account would be barred under the applicable statute of limitations.

(e)(1) Subject to § 674.47(d), the institution shall assess against the borrower all reasonable costs incurred by the institution with regard to a loan obligation.

(2) The institution shall determine the amount of collection costs that shall be charged to the borrower for actions required under this section, and §§ 674.44, 674.46, 674. 48, and 674.49, based on either—

(i) Actual costs incurred for these actions with regard to the individual borrower's loan; or

(ii) Average costs incurred for similar actions taken to collect loans in similar stages of delinquency.

(3) The Fund must be reimbursed for collection costs initially charged to the Fund and subsequently paid by the borrower.

(f)(1) An institution shall ensure that any funds collected from the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

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(Authority: 20 U.S.C. 424, 1087cc, 1091a)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.46 Litigation procedures.

(a)(1) If the collection efforts described in § 674.45 do not result in the repayment of a loan, the institution shall determine at least annually, until litigation to collect the account is barred under the applicable statute of limitations, whether—

(i) The total amount owing on the borrower's account, including outstanding principal, accrued interest, collection costs and late charges on all of the borrower's Perkins, National Direct and National Defense Student Loans held by that institution, is more than $200;

(ii) The borrower can be located and served with process;

(iii)(A) The borrower has sufficient assets attachable under State law to satisfy a major portion of the oustanding debt; or

(B) The borrower has income from wages or salary which may be garnished under applicable State law sufficient to satisfy a major portion of the debt over a reasonable period of time;

(iv) The borrower does not have a defense that will bar judgment for the institution; and

(v) The expected cost of litigation, including attorney's fees, does not exceed the amount which can be recovered from the borrower.

(2) The institution shall sue the borrower if it determines that the conditions in paragraph (a)(1) of this section are met.

(3) The institution may sue a borrower in default, even if the conditions in paragraph (a)(1) of this section are not met.

(b) The institution shall assess against and attempt to recover from the borrower—

(1) All litigation costs, including attorney's fees, court costs and other related costs, to the extent permitted under applicable law; and

(2) All prior collection costs incurred and not yet paid by the borrower.

(c)(1) An institution shall ensure that any funds collected as a result of litigation procedures are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(d) If the institution is unable to collect the full amount owing on the loan after following the procedures set forth in §§ 674.41 through 674.46, the institution may—

(1) Submit the account to the Secretary for assignment in accordance with the procedures in § 674.50; or

(2) With the Secretary's approval, refer the account to the Department for collection.

(Authority: 20 U.S.C. 424, 1087cc)

§ 674.47 Costs chargeable to the Fund.

(a) *General: Billing costs.* (1) Except as provided in paragraph (c) of this section, the institution shall assess against the borrower, in accordance with § 674.43(b)(2) the cost of actions taken with regard to past-due payments on the loan.

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the late charges, the institution may charge the Fund only that portion of the late charges which represents the cost of telephone calls to the borrower pursuant to § 674.43.

(b) *General: Collection costs.* (1) Except as provided in paragraph (d) of this section, the institution shall assess against the borrower, in accordance with §§ 674.45(e) and 674.46(b), the costs of actions taken on the loan obligation pursuant to §§ 674.44, 674.45, 674.46, 674.48 and 674.49.

(2) If the amount recovered from the borrower does not suffice to pay the amount on the past-due payments late charges, and these collection costs, the institution may charge and Fund the unpaid collection costs in accordance with paragraph (e) of this section.

(c) *Waiver: Late charges.* The institution may waive late charges assessed against a borrower who repays the full amount of the past-due payments on a loan.

(d) *Waiver: Collection costs.* Before filing suit on a loan, the institution may waive that percentage of the collection costs applicable to the amount then past due on the loan equal to the percentage of that past-due balance that the borrower pays within 30 days of the date on which the borrower and the institution enter into a written repayment agreement on the loan.

(e) *Limitations on costs charged to the Fund.* The institution may charge to the Fund the following costs not paid by the borrower, including amounts waived under paragraph (d) of this section:

(1) A reasonable amount for the cost of a successful address search required in § 674.44(b).

(2) Costs related to the use of credit bureaus as provided in § 674.45(b)(1).

(3) For first collection efforts pursuant to § 674.45(a)(2), an amount that does not exceed 33⅓ percent of the amount of principal, interest and late charges collected.

(4) For second collection efforts pursuant to § 674.45(c)(1)(ii), an amount that does not exceed 50 percent of the amount of principal, interest and late charges collected.

(5) For litigation costs, including attorney's fees, court costs and other related costs, an amount which does not exceed—

(i) Actual costs incurred in taking specific actions in bankruptcy proceedings required or authorized under § 674.49;

(ii) That portion of costs of other actions in bankruptcy proceedings which, together with costs authorized and incurred under paragraph (e)(5)(i) of this section, do not exceed one-third of the total amount of the judgment obtained on the loan; and

(iii) In all other cases, 50 percent of the amount of the judgment obtained against the borrower.

(6) If a collection firm performs or contracts for the performance of both collection and litigation activities on a defaulted loan, an amount for both of the functions that does not exceed 33⅓ percent of the amount of principal, interest and late charges collected by a first collection effort as required in § 674.45(a), or 50 percent for a second collection effort as required in § 674.45(c)(1).

(f) *Records.* For audit purposes, an institution shall support the amount of collection costs charged to the Fund with appropriate documentation, including telephone bills and receipts from collection firms. The documentation must be maintained in the institution's files as provided in § 674.19.

(g) *Write-offs.* (1) An institution may write off an account if—

(i)(A) It carries out the procedures in §§ 674.43, 674.44 and 674.45; and

(B) The total amount owing on a borrower's loan account held by that institution, including outstanding principal, accrued interest, late charges and collection costs on all of the borrower's Perkins, Direct and Defense Student Loans is $200.00 or less; or (ii)(A) The loan is discharged in bankruptcy; and

(B) The institution has exhausted the procedures in this subpart with regard to any endorser.

(2) An institution which writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

(3) If an institution receives a payment from a borrower after the loan has been written off, it shall deposit that payment into the Fund.

(Authority: 20 U.S.C. 424, 1087cc)

§ 674.48 Use of contractors to perform billing and collection or other program activities.

(a) The institution is responsible for ensuring compliance with the billing and collection procedures set forth in this subpart. The institution may use employees to perform these duties or may contract with other parties to perform them.

(b) An institution that contracts for performance of any duties under this subpart remains responsible for compliance with the requirements of this subpart in performing these duties, including decisions regarding cancellation, postponement, or deferment of repayment, extension of the repayment period, other billing and collection matters, and the safeguarding of all funds collected by its employees and contractors.

(c) If an institution uses a billing service to carry out billing procedures under § 674.43, the institution shall ensure that the service—

(1) Provides at least quarterly, a statement to the institution which shows—

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number, and, if known, any changes to the borrower's Social Security number; and

(iii) Amounts collected from the borrower;

(2) Provides at least quarterly, a statement to the institution with a listing of its charges for skip-tracing activities and telephone calls;

(3) Does not deduct its fees from the amount is receives from borrowers;

(4)(i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lock-box maintained for the institution; or

(iii) Deposits those funds received directly from the borrower immediately upon receipt in an institutional trust account; and

(5) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(d) If the institution uses a collection firm, the institution shall ensure that the firm—(1)(i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lockbox maintained for the institution; or

(iii) Deposits those funds received directly from the borrower promptly in an institutional trust account, after deducting its fees, if authorized to do so by the institution; and

(2) Provides at least quarterly, a statement to the institution which shows—

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number and, if known, any changes to the borrower's Social Security number;

(iii) Amounts collected from the borrower; and

(3) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(e) If an institution uses a billing service to carry out § 674.43 (billing procedures), it may not use a collection firm that—

(1) Owns or controls the billing service;

(2) Is owned or controlled by the billing service; or

(3) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.

(f)(1) An institution that employs a third party to perform billing or collection services required under this subpart shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance in accordance with the requirements of this paragraph.

(2) If the institution does not authorize the third party to deduct its fees from payments from borrowers, the institution shall ensure that the party is bonded or insured in an amount not less than the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party.

(3) In the institution authorizes the third party performing collection services to deduct its fees from payments from borrowers, the institution shall ensure that—

(i) If the amount of funds that the institution reasonably expects to be paid over a two-month period on accounts it refers to the party is less than $100,000, the party is bonded or insured in an amount equal to the lesser of—

(A) Ten times the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party; or

(B) The total amount of funds that the party demonstrates will be repaid over a two-month period on all accounts of any kind on which it performs billing and collection services; and

(ii) If the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party is more than $100,000, the institution shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance—

(A) Naming the institution as beneficiary; and

(B) In an amount not less than the amount of funds reasonably expected to be repaid on accounts referred by the institution to the party during a two-month period.

(4) The institution shall review annually the amount of repayments expected to be made on accounts it refers to a third party for billing or collection services, and shall ensure that the amount of the fidelity bond or insurance coverage maintained continues to meet the requirements of this paragraph.

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(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.49 Bankruptcy of borrower.

(a) *General.* If an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of meeting of creditors, the institution and its agents shall immediately suspend any collection efforts outside the bankruptcy proceeding—

(1) Against the borrower; and

(2) If the borrower has filed for relief under Chapter 12 or 13 of the Bankruptcy Code, against any endorser.

(b) *Proof of claim.* The institution shall file a proof of claim in the bankruptcy proceeding, unless, in the case of a proceeding under Chapter 7 of the Bankruptcy Code, the notice of meeting of creditors states that the borrower has no assets.

(c) *Borrower's request for determination of dischargeability.* (1) The institution shall follow the procedures in this paragraph if it is properly served with a complaint in a proceeding under Chapter 7, 11, or 12 of the Bankruptcy Code, or under 11 U.S.C. 1328(b), for a determination of dischargeability under 11 U.S.C. 523(a)(8)(B) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents.

(2) If more than five years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief in bankruptcy, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) If less than five years of the repayment period on the loan, excluding periods of deferment granted to the borrower, has passed before the borrower filed the petition for relief, the institution shall determine, on the basis of reasonably available informa-

tion, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under Subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents.

(4) If the institution concludes that repayment would not impose an undue hardship, the institution shall determine whether the costs reasonably expected to be incurred to oppose discharge will exceed one-third of the total amount owed on the loan, including principal, interest, late charges and collection costs.

(5) If the expected costs of opposing discharge of such a loan do not exceed one-third of the total amount owed on the loan, the institution shall—

(i) Oppose the borrower's request for a determination of dischargeability; and

(ii) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(6) In opposing a request for a determination of dischargeability, the institution may compromise a portion of the amount owed on the loan if it reasonably determines that the compromise is necessary in order to obtain a judgment on the loan.

(d) *Request for determination of non-dischargeability.* The institution may file a complaint for a determination that a loan obligation is not dischargeable and for judgment on the loan if the institution would have been required under paragraph (c) of this section to oppose a request for a determination of dischargeability with regard to that loan.

(e) *Chapter 13 repayment plan.* (1) The institution shall follow the procedures in this paragraph in response to a repayment plan proposed by a borrower who has filed for relief under Chapter 13 of the Bankruptcy Code.

(2) The institution is not required to respond to a proposed repayment plan, if—

(i) The borrower proposes under the repayment plan to repay all principal, interest, late charges and collection costs on the loan; or

(ii) The repayment plan makes no provision with regard either to the loan obligation or to general unsecured claims.

(3)(i) If the borrower proposes under the repayment plan to repay less than the total amount owed on the loan, the institution shall determine from its own records and court documents—

(A) The amount of the loan obligation dischargeable under the plan by deducting the total payments on the loan proposed under the plan from the total amount owed;

(B) Whether the plan or the classification of the loan obligation under the proposed plan meets the requirements of section 1325 of the Code; and

(C) Whether grounds exist under 11 U.S.C. 1307 to move for conversion or dismissal of the Chapter 13 case.

(ii) If the institution reasonably expects that costs of the appropriate actions will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) Object to confirmation of a proposed plan that does not meet the requirements of 11 U.S.C. 1325; and

(B) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307.

(4)(i) The institution shall monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a "hardship discharge" under 11 U.S.C. 1328(b), and the institution holds a loan that entered repayment status more than five years, excluding periods of deferment, before the borrower filed the petition for relief in bankruptcy, the institution shall determine from its own records and information derived from documents filed with the court—

(A) Whether grounds exist under 11 U.S.C. 1307 to convert or dismiss the case; and

(B) Whether the borrower has demonstrated entitlement to the "hardship discharge" by meeting the requirements of 11 U.S.C. 1328(b).

(ii) If the institution reasonably expects that costs of the appropriate actions, when added to the costs already incurred in taking actions authorized under this section, will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307; or

(B) Oppose the requested discharge where the debtor has not demonstrated that the requirements of 11 U.S.C. 1328(b) are met.

(f) *Resumption of collection from the borrower.* The institution shall resume bill and collection action prescribed in this subpart after—

(1) The borrower's petition for relief in bankruptcy has been dismissed;

(2) The borrower has received a discharge under 11 U.S.C. 727, 11 U.S.C. 1141, 11 U.S.C. 1228, or 11 U.S.C. 1328(b), unless—

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii) (A) The loan entered the repayment period more than five years, excluding periods of deferment, before the filing of the petition, and

(B) The loan is not excepted from discharge under other applicable provisions of the Code; or

(3) The borrower has received a discharge under 11 U.S.C. 1328(a) after completion of a repayment plan which made no provisions with regard to either—

(i) The loan obligation; or

(ii) Unsecured claims in general.

(g) *Resumption of collection from the endorser.* The institution shall resume billing and collection action against an endorser of a borrower who has filed for relief under Chapter 12 or 13 of the Code after the borrower's case has been completed or dismissed, or the stay applicable to such action has been lifted.

(h) *Termination of collection and write-off.* (1) An institution shall terminate all collection action and write off a loan on which there is no endorser if it receives—

(i) A general order of discharge on a borrower owing a student loan obligation which entered the repayment period more than 5 years, exclusive of periods of deferment, from the date on which a petition for relief under Chapter 7, 11 or 12 of the Bankruptcy Code was filed;

(ii) A discharge order, other than an order under 11 U.S.C. 1238(b), in a case brought under Chapter 13 of the Code; or

(iii) A judgment that repayment of the debt would constitute an undue hardship, and that the debt is therefore dischargeable.

(2) If an institution receives a repayment from a borrower after a loan has been discharged, it shall deposit that payment in its Fund.

(3) An institution may write off a loan on which there is an endorser only after it has exhausted the procedures in this subpart with regard to the endorser.

(Approved by the Office of Management and Budget under control number 1840-0581)

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.50 Assignment of defaulted loans to the United States.

(a) An institution may submit a defaulted loan note to the Secretary for assignment to the United States if—

(1) The institution has been unable to collect on the loan despite complying with the diligence procedures, including at least a first level collection effort as described in § 674.45(a) and litigation, if required under § 674.46(a), to the extent these actions were required by regulations in effect on the date the loan entered default;

(2) The total amount of the borrower's account to be assigned, including outstanding principal, accrued interest, collection costs and late charges, is greater than $200.00; and

(3) The loan has been accelerated.

(b) An institution may submit a defaulted note for assignment only during the submission period established by the Secretary.

(c) An institution shall submit to the Secretary the following documents for any loan it proposes to assign;

(1) An assignment form provided by the Secretary and executed by the institution, which must include a certification by the institution that it has complied with the requirements of this subpart, including at least a first level collection effort as described in

§ 674.45(a) in attempting collection on the loan.

(2) The original promissory note or a certified copy of the original note.

(3) A copy of the repayment schedule.

(4) A certified copy of any judgment order entered on the loan.

(5) A complete statement of the payment history.

(6) Copies of all approved requests for deferred and cancellation.

(7) A copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan.

(8) Documentation that the institution has withdrawn the loan from any firm that it employed for address search, biling, collection or litigtion services, and has notified that firm to cease collection activity on the loans.

(9) Copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable.

(10) If the institution has a default rate as calculated under § 674.2 greater than 7.5 percent as of June 30 of the second year preceding the submission period, documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section.

(d) Except as provided in paragraph (e) of this section, and subject to paragraph (g) of this section, the Secretary accepts an assignment of a note described in paragraph (a) of this section and submitted in accordance with paragraph (c) of this section.

(e) The Secretary does not accept assignment of a loan if—

(1) The institution has not provided the Social Security number of the borrower;

(2) The borrower has received a discharge in bankruptcy, unless—

(i) The bankruptcy court has determined that the loan obligation is nondischargeable and has entered judgment against the borrower; or

(ii) A court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order;

(3) The institution has initiated litigation against the borrower, unless the judgment has been entered against the borrower and assigned to the United States; or

(4) The borrower has been granted cancellation due to death or has filed for or been granted cancellation due to permanent and total disability.

(f)(1) The Secretary provides an institution written notice of the acceptance of the assignment of the note. By accepting assignment, the Secretary acquires all rights, title, and interest of the institution in that loan.

(2) The institution shall endorse and forward to the Secretary any payment received from the borrower after the date on which the Secretary accepted the assignment, as noted in the written notice of acceptance.

(g)(1) The Secretary may determine that a loan assigned to the United States is unenforceable in whole or in part because of the acts or omissions of the institution or its agent. The Secretary may make this determination with or without a judicial determination regarding the enforceability of the loan.

(2) The institution shall reimburse the Fund for that portion of the outstanding balance on a loan assigned to the United States which the Secretary determines to be unenforceable because of an act or omission of that institution or its agent.

(3) Upon reimbursement to the Fund by the institution, the Secretary shall transfer all rights, title and interest of the United States in the loan to the institution for its own account.

(h) An institution shall consider a borrower whose loan has been assigned to the United States for collection to be in default on that loan for the purpose of eligibility for title IV financial assistance, until the borrower provides the institution confirmation from the Secretary that he or she has made satisfactory arrangements to repay the loan.

(Approved by the Office of Management and Budget under control number 1840-0581)

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

Subpart D—Loan Cancellation

Source: 52 FR 45758, Dec. 1, 1987, unless otherwise noted.

§ 674.51 Special definitions.

The following definitions apply to this Subpart:

(a) *Academic year or its equivalent for elementary and secondary schools and special education:* (1) One complete school year, or two half years from different school years, excluding summer sessions, that are complete and consecutive and generally fall within a 12-month period.

(2) If such a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

(b) *Academic year or its equivalent for institutions of higher education:* A period of time in which a full-time student is expected to complete—

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) *Chapter I children:* Children of ages 5 through 17 who are counted under section 111(c) of the Elementary and Secondary Education Act of 1965, as amended.

(d) *Elementary school:* A school that provides elementary education, including education below grade 1, as determined by—

(1) State law; or

(2) The Secretary, if the school is not in a State.

(e) *Handicapped children:* Children of ages 3 through 21 inclusive who require special education and related services because they are—

(1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech and language impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed;

(7) Orthopedically impaired;

(8) Specific learning disabled; or

(9) Otherwise health impaired.

(f) *Local educational agency:* (1) A public board of education or other public authority legally constituted within a State to administer, direct, or perform a service function for public elementary or secondary schools in a city, county, township, school district, other political subdivision of a State; or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(g) *Secondary school:* (1) A school that provides secondary education, as determined by—

(i) State law; or

(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(h) *State education agency:* (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(i) *Teacher:* (1) A teacher is a person who provides—

(i) Direct classroom teaching;

(ii) Classroom-type teaching in a non-classroom setting; or

(iii) Educational services to students directly related to classroom teaching such as school librarians or school guidance counselors.

(2) A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal educational services to students.

(3) An individual who provides one of the following services does not qualify as a teacher unless that individual is licensed, certified, or registered by the appropriate State education agency for that area in which he or she is providing related special educational services, and the services provided by the individual are part of the educational curriculum for handicapped children:

(i) Speech pathology and audiology.

(ii) Psychological and counseling services.

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(iii) Physical or occupational therapy.

(iv) Recreational therapy.

(Authority: 20 U.S.C. 425, 1087ee, 1141, and 1401(1))

§ 674.52 Cancellation procedures.

(a) *Application for cancellation.* To qualify for cancellation of a loan, a borrower shall submit to the institution to which the loan is owed, by the date that the institution establishes, both a written request for cancellation and any documentation required by the institution to demonstrate that the borrower meets the conditions for the cancellation requested.

(b)(1) An institution may refuse a request for cancellation based on a claim of simultaneously teaching in two or more schools or institutions if it cannot determine easily from the documentation supplied by the borrower that the teaching is full-time. However, it shall grant the cancellation if one school official certifies that a teacher worked full-time for a full academic year.

(2) If the borrower is unable due to illness or pregnancy to complete the academic year, the borrower still qualifies for the cancellation if—

(i) The borrower completes the first half of the academic year, and has begun teaching the second half; and

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract for the academic year for purposes of salary increment, tenure, and retirement.

(c)(1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation based on teaching, volunteer, or military service by complying with the requirements of paragraph (a) of this section.

(2) A borrower whose defaulted loan has been accelerated—

(i) May qualify for a loan cancellation for services performed before the date of acceleration; and

(ii) Cannot qualify for a cancellation for services performed on or after the date of acceleration.

(3) An institution shall grant a request for cancellation on account of the death or disability of the borrower without regard to the repayment status of the loan.

(d) The Secretary considers a borrower's loan deferment under §§ 674.34, 674.35 and 674.36 to run concurrently with any period for which a cancellation for military or VISTA service is granted.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 425, 1087ee)

[52 FR 45758, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.53 Teacher cancellation—Direct and Perkins loans.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Direct or Perkins loan for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds, in that year, under Chapter 1 of the Education Consolidation and Improvement Act of 1981; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of Chapter 1 children.

(2) However, the Secretary does not select more than 50 percent of the schools in a State receiving Chapter 1 assistance.

(3)(i) The Secretary selects schools under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of Chapter 1 children attending those schools.

(iii) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs

(BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(b) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Direct or Perkins loan, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(c) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a) or (b) (low-income or handicapped) of this section, a borrower shall teach full time for a complete academic year, or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C. 1087ee)

§ 674.54 Teacher cancellation—Defense loans.

(a) *Cancellation for full-time teaching.* (1) An institution shall cancel up to 50 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in—

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school.

(2) The cancellation rate is 10 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year, or its equivalent, of teaching.

(b) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds in that year under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended; and

(ii) Has been selected by the Secretary based on a determination that a high concentration of students enrolled at the school are from low-income families.

(2)(i) The Secretary does not select more than 25 percent of the eligible schools in a State for any year unless at least 50 percent of the enrollment of each school selected is made up of Chapter 1 children.

(ii) In making this calculation, the Secretary uses a low-income factor of $3,000.

(3)(i) The Secretary selects schools under paragraph (b)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of Chapter 1 children attending those schools.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under

contract with BIA to qualify as schools serving low-income students.

(5) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (b) of this section.

(6) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(7) Cancellation for full-time teaching under paragraph (b) of this section is available only for teaching beginning with academic year 1966-67.

(c) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan, plus interest, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(3) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(4) Cancellation for full-time teaching under paragraph (c) of this section is available only for teaching beginning with the academic year 1967-68.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C. 425(b)(3))

§ 674.55 Cancellation for service in a Head Start program.

(a) An institution shall cancel up to 100 percent of a borrower's Direct or Perkins loan, plus the interest on the unpaid balance, for service as a full-time staff member in a "Head Start" program if—

(1) The program operates for a complete academic year, or its equivalent; and

(2) The borrower's salary does not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start program.

(b) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching service.

(c)(1) "Head Start" is a preschool program carried out under the Head Start Act (Subchapter B, Chapter 8 of Title VI of Pub. L. 97-35, the Budget Reconciliation Act of 1981, as amended; formerly authorized under section 222(a)(1) of the Economic Opportunity Act of 1964). (42 U.S.C. 2809 (a) (1))

(2) "Full-time staff member" is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start program.

(Authority: 20 U.S.C. 425)

§ 674.56 Cancellation for military service.

(a) *Cancellation on a Defense loan.* (1) An institution shall cancel up to 50 percent of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for the first complete year of qualifying service, and for each consecutive year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(b) *Cancellation of a Direct or Perkins loan.* (1) An institution shall cancel up to 50 percent of a Direct or Perkins loan for service as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(Authority: 20 U.S.C. 425(b)(3) and 1087ee)

§ 674.57 Cancellation for volunteer service—Perkins loans.

(a) An institution shall cancel up to 70 percent of the outstanding balance on a Perkins loan for service as a volunteer under—

(1) The Peace Corps Act; or

(2) The Domestic Volunteer Service Act of 1973.

(b) Cancellation rates are—

(1) Fifteen percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second twelve-month periods of service;

(2) Twenty percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth twelve-month periods of service.

(Authority: 20 U.S.C. 1087ee)

§ 674.58 Cancellation for death or disability.

(a) *Death.* An institution shall cancel the unpaid balance of a borrower's Defense, Direct, or Perkins loan, including interest, if the borrower dies. The lending institution shall cancel the loan on the basis of a death certificate or other evidence of death that is conclusive under State law.

(b) *Permanent and total disability.* (1) An institution shall cancel the unpaid balance of a Defense, Direct, or Perkins loan, including interest, if the borrower becomes permanently and totally disabled after receiving the loan. The lending institution shall decide whether to cancel the loan based on medical evidence, certified by a physician, which the borrower or his or her representative supplies.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(c) *No Federal reimbursement.* No Federal reimbursement is made to an institution for cancellation of loans due to death or disability.

(d) *Retroactive.* Cancellation for death or disability applies retroactively to all Defense, Direct or Perkins loans.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 425 and 1087dd and sec. 130(g)(2) of the Education Amendments of 1976, Pub. L. 94-482)

[52 FR 45758, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 674.59 No cancellation for prior service—no repayment refunded.

(a) No portion of a loan may be cancelled for teaching, Head Start, volunteer or military service if the borrower's service is performed—

(1) During the same period that he or she received the loan; or

(2) Before the date the loan was disbursed to the borrower.

(b) The institution shall not refund a repayment made during a period for which the borrower qualified for a cancellation unless the borrower made the payment due to an institutional error.

(Authority: 20 U.S.C. 425 and 1087ee)

§ 674.60 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest cancelled under §§ 674.54 and 674.56(a).

(2) The institution's share of cancelled principal and interest is computed by the following ratio:

$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) *Reimbursement for Direct and Perkins loan cancellation.* The Secretary pays an institution each award year the principal and interest cancelled from its student loan fund under §§ 674.53, 674.55, 674.56(b) and 674.57. The institution shall deposit this amount in its Fund.

(Authority: 20 U.S.C. 428 and 1087ee)

APPENDIX A TO PART 674—PROMISSORY NOTE—PERKINS LOAN

Perkins Loan Program: PERKINS LOAN

[Any bracketed clause or paragraph may be included at option of institution.]

I, —— promise to pay to —— (hereinafter called the Institution) located at —— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures For Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 9 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that period is shortened under paragraph III(5), or extended under paragraphs III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

[(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all may outstanding Perkins Loans including those received from other institutions. The amount of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

[(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment unless that year is also the year in which I am required to begin repayment on this loan.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Article VI, VII, VIII, IX, X, or XI of this agreement.'

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary;

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service;

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled;

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six (6) months—

(i) That follows by six months or less a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of the teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate to 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the U.S.C.

(2) This loan will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973.

(2) This loan will be cancelled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the third and fourth twelve-month periods of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1......			
2......			
3......			
4......			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	signature of borrower
1...........................			
2...........................			
3...........................			
4...........................			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature —— [(seal)].

Date —— 19—.

Permanent Address (Street or Box Number, City, State, and Zip Code).

Social Security Number (borrower must provide).——

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner —— [(seal)].
Date —— 19—.

Permanent Address (Street or Box Number, City, State, Zip Code).

(Authority: 20 U.S.C. 1087dd)

[46 FR 5241, Jan. 19, 1981]

APPENDIX B TO PART 674—PROMISSORY NOTE—DIRECT LOAN

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, —— promise to pay to —— (hereinafter called the Institution) located at —— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 6 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that period is shortened under paragraph III(5), or extended under paragraph III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).]

[(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.]

[(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment, unless that year is also the year in which I am required to begin repayment on this loan.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer, or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service.

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled;

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service; and

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the In

stitution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XI. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIII. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loan I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL STUDENT LOANS AT OTHER INSTITUTIONS.

	Amount	Date	Institution
1........................			
2........................			
3........................			
4........................			

XV. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the date indicated:

	Amount	Date	Signature of borrower
1........................			
2........................			
3........................			
4........................			

NOTICE TO BORROWERS: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature ———————— [(seal)]

Date ———————————— 19——

Permanent Address (Street or Box Number, City, State, and Zip Code)————————

————————————————————

Social Security Number (borrower must provide) ————————————

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner ———————— [(seal)]

Date ———————————— 19——

Permanent Address (Street or Box Number, City, State, and Zip Code)————————

————————————————————

AUTHORITY: 20 U.S.C. 1087dd.

[46 FR 5241, Jan. 19, 1981]

APPENDIX C TO PART 674—PROMISSORY NOTE—PERKINS LOAN—LESS THAN HALF-TIME STUDENT BORROWER

Perkins Loan Program: Perkins Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, ——— promise to pay to ——— (hereinafter called the Institution) located at ——— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures For Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the

ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest which accrues on it to the Lending Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding Perkins loan I have received; or

(ii) If I have no other outstanding Perkins loans, either nine months from the date this loan is made, or, if the loan was made less than nine months after I ceased at least half-time enrollment status, at the end of that nine-month period.

(B) I understand that this repayment period shall end 10 years later, unless it is extended under paragraph III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Lending Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles IV, VII, VIII, IX, X, or XI of this agreeemnt.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant informaion, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII and IX, performed

after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accure, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary;

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service;

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled;

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother or preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six months—

(i) That follows by six months or less of a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Lending Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or the equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Lending Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented request to the Lending Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973.

(2) This loan will be cancelled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the third and fourth twelve-month periods of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This notice is signed as a sealed instrument.]

Signature ———— [(seal)].

Date ——— 19——.

Permanent Address (Street or Box Number, City, State, and Zip Code)

———————————————

Social Security Number (borrower must provide) ————. ————————

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner ———— [(seal)].

Date ——— 19——.

Permanent Address (Street or Box Number, City, State, Zip Code)

———————————————

(Authority: 20 U.S.C. 1087dd)

[46 FR 5241, Jan. 19, 1981]

APPENDIX D TO PART 674—PROMISSORY NOTE—DIRECT LOAN—LESS THAN HALF-TIME STUDENT BORROWER

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, ———— promise to pay to ——— (hereinafter called the Institution) located at ———— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to provide that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding loan made under the Perkins Loan Program I have received; or,

(ii) If I have no other outstanding loans made under the Perkins Loan Program, either nine months from the date this loan is made, or, if the loan was made less than nine months after I ceased at least half-time enrollment status, at the end of that nine-month period.

(B) I understand that this repayment period shall end 10 years later, unless it is extended under paragraphs III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institaution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this laon at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owned at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayment or extend the repayments period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment, prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charge and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles, VI, VII, VIII, IX, and X of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant inforrmation, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer, or military service described in Articles VII, VIII and IX, performed after the date of Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service.

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled;

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service; and

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have special learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understanding that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the In-

stitution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance for each complete year of such service.

X. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XI. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIII. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1........................			
2........................			
3........................			
4........................			

XV. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1........................			
2........................			
3........................			
4........................			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature——————[(seal)].

Date————19——.

Permanent Address (Street or Box Number, City, State, and Zip Code)

____

Social Security Number (borrower must provide)———————.——————————

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner——————[(seal)].

Date———19——.

Permanent Address (Street or Box Number, City, State, Zip Code)

(Authority: 20 U.S.C. 1087dd)

[46 FR 5241, Jan. 19, 1981]

APPENDIX E TO PART 674—EXAMPLES FOR COMPUTING MAXIMUM PENALTY CHARGES (6 MONTHS UNPAID OVERDUE PAYMENTS) ON DIRECT LOANS MADE FOR PERIODS OF ENROLLMENT BEFORE JANUARY 1, 1986

Monthly repayment schedule	Installment due dates—Missed payments						Separate monthly maximum penalty charges
	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	
1st Past due installment	$1						$1
2nd Past due installment		$1 + $2					3
3rd Past due installment			$3 + $2				5
4th Past due installment				$5 + $2			7
5th Past due installment					$7 + $2		9
6th Past due installment						$9 + $2	11
Cumulative maximum subtotals	1	4	9	16	25	36	

Bimonthly repayment schedule	Installment due dates—Missed payments			Separate bimonthly maximum penalty charges
	Jan. 2	Mar. 2	May 2	
1st Past due installment	$3			$3
2nd Past due installment		$3 + $3		6
3rd Past due installment			$6 + $3	9
Cumulative maximum subtotals	3	9	18	

Quarterly repayment schedule	Installment due dates—Missed payments		Separate quarterly maximum penalty charges
	Jan. 2	Apr. 2	
1st Past due installment	$6		$6
2nd Past due installment		$6 + $6	12
Cumulative maximum subtotals	6	18	

Note.—In the above table of examples, the Cumulative Maximum Subtotal line contains the maximum penalty charges that can be assessed on an NDSL borrower for any given installment that was missed on its due date. For example, if three borrowers, all on different repayment schedules, owed and missed their first installment payment on January 2 and all three made their next payment on April 10, the maximum penalty charges that could be assessed each individual borrower would be as follows: $16 to the monthly repayment schedule borrower; $9 to the bimonthly repayment schedule borrower; and $18 to the quarterly repayment schedule borrower.

[46 FR 5241, Jan. 19, 1981]

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

NOTE: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Subpart A—College Work-Study Program

Sec.

675.1 Purpose and identification of common provisions.
675.2 Definitions.
*675.3 Application.
675.4 Allocation and reallocation.
675.5–675.7 [Reserved]
675.8 Program participation agreement.
675.9 Student eligibility.
675.10 Selection of students for CWS employment.
675.11–675.13 [Reserved]
675.14 Overaward.

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*675.15 Coordination with BIA grants.
675.16 Payments to students.
675.17 Federal interest in allocated funds.
675.18 Use of funds.
675.19 Fiscal procedures and records.
675.20 Eligible employers and general conditions and limitation on employment.
675.21 Institutional employment.
675.22 Employment provided by a Federal, State, or local agency, or a private nonprofit organization.
675.23 Employment provided by a private for-profit organization.
675.24 Establishment of wage rate under CWS.
675.25 Earnings applied to cost of attendance.
675.26 CWS Federal share limitations.
675.27 Nature and source of institutional share.
675.28 Community service learning program.

Subpart B—Job Location and Development Programs

675.31 Purpose.
675.32 Program description.
675.33 Allowable costs.
675.34 Multi-institutional job location and development programs, or arrangements with nonprofit organizations.
675.35 Agreement.
675.36 Procedures and records.
675.37 Termination and suspension.

APPENDIX A [RESERVED]
APPENDIX B TO PART 675—MODEL OFF-CAMPUS AGREEMENT

AUTHORITY: 42 U.S.C. 2751-2756a, unless otherwise noted.

SOURCE: 52 FR 45770, Dec. 1, 1987, unless otherwise noted.

Subpart A—College Work-Study Program

§ 675.1 Purpose and identification of common provisions.

(a) The College Work-Study (CWS) Program provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(Authority: 42 U.S.C. 2751-2756b)

§ 675.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Award year
Clock hour
Enrolled
Guaranteed Student Loan (GSL) Program
HEA
Income Contingent Loan Program
Pell Grant Program
Perkins Loan Program
PLUS Program
Secretary
SLS Program
Supplemental Educational Opportunity Grant (SEOG) Program

(b) The Secretary defines other terms used in this part as follows:

**Expected family contribution* (EFC): The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

**Financial need:* The difference between a student's cost of attendance and his or her EFC.

**Full-time student:* An enrolled student who is carrying a full-time academic work load (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarters system.

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

*Financial

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

**Institution of higher education* (*institution*). A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

* *Need-based employment:* Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

Nonprofit organization: An organization owned and operated by one or more nonprofit corporations or associations where no part of the organization's net earnings benefits, or may lawfully benefit, any private shareholder or entity. An organization may show that it is nonprofit by meeting the provisions of § 75.51 of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.51.

(Authority: 20 U.S.C. 1141(c))

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year. A payment period is not the payroll period discussed in § 675.16.

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

(Authority: 20 U.S.C. 1087aa-1087ii)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 52581, Dec. 28, 1988]

*§ 675.3 Application.

(a) To participate in the CWS program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation or reallocation of the CWS program funds under section 442 of the HEA.

(Authority: 42 U.S.C. 2752)

§ 675.4 Allocation and reallocation.

(a) The Secretary allocates and reallocates funds to institutions participating in the College Work-Study program in accordance with section 442 of the HEA.

(b) As used in section 442 of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.
(2) Business.
(3) Trade/Technical.
(4) Art Schools.
(5) Other Proprietary Institutions.
(6) Non-Proprietary Institutions.

(c) *Payment to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(d) *Authority to expend funds.* Except as specifically provided in § 675.18 (c) and (d), an institution shall not use funds allocated or reallocated for an award year—

(1) To meet CWS wage obligations incurred with regard to an award of CWS employment made in any other award year; or

(2) To satisfy any other obligation incurred after the end of the designatéd award year.

(Authority: 42 U.S.C. 2752)

§§ 675.5—675.7 [Reserved]

§ 675.8 Program participation agreement.

To participate in the CWS program, an institution of higher education shall enter into a participation agreement with the Secretary. The agreement provides that, among other things, the institution shall—

(a) Use the funds it receives solely for the purposes specified in this part;

(b) Administer the CWS program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR Part 668;

(c) Make employment under the CWS program reasonably available, to the extent of available funds, to all eligible students;

(d) Make equivalent employment offered or arranged by the institution reasonably available, to the extent of available funds, to all students in the institution who want to work; and

(e) Award CWS employment, to the maximum extent practicable, that will complement and reinforce each recipient's educational program or career goals.

(Authority: 20 U.S.C. 1094, 42 U.S.C. 2753)

§ 675.9 Student eligibility.

A student at an institution of higher education is eligible to receive part-time employment under the CWS program for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution; and

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1091; 42 U.S.C. 2752-2753)

§ 675.10 Selection of students for CWS employment.

(a) An institution shall make employment under CWS reasonably available, to the extent of available funds, to all eligible students.

(b) An institution shall establish selection procedures and those procedures must be—

(1) Uniformly applied;
(2) In writing; and
(3) Maintained in the institution's files.

(c) If an institution's allocation of CWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall award a reasonable proportion of its allocation of CWS funds to those students.

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(Authority: 20 U.S.C. 1091, 42 U.S.C. 2752-2753)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§§ 675.11—675.13 [Reserved]

§ 675.14 Overaward.

•(a) *Overaward prohibited.* (1) An institution may only award CWS employment to a student if the award, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding CWS employment to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards CWS funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the CWS award, and the total resources including the prospective CWS wages exceed the student's need, the overaward is the amount that exceeds need.

•(b) *Resources.* (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any—

(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

•(c) *Treatment of resources in excess of need.* An institution shall take the following steps if it learns that a student has received additional resources not included in the calculation of CWS eligibility that would result in the student's total resources exceeding his or her financial need by more than $200:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(d)(1) An institution may fund a student's CWS employment with CWS funds only until the amount of the CWS award has been earned or until the student's financial need, as recalculated under paragraph (c)(1) of this section, is met.

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, an institution may provide additional CWS funding to a student whose need has been met until that student's cumulative earnings from all employment occurring subsequent to the time

his or her financial need has been met exceed $200.

(Authority: 42 U.S.C. 2753(b)(3))

[53 FR 52581, Dec. 28, 1988]

*§ 675.15 Coordination with BIA grants.

(a) To determine the amount of CWS compensation for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total or the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: Loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 42 U.S.C. 2753)

§ 675.16 Payments to students.

(a)(1)(i) An institution shall pay a student at least once a month. The Federal share of each payment must be paid to the student by check or similar instrument that the student can cash on his or her own endorsement.

(ii) The institution may not directly transfer the Federal share of any payment to the student's account at the institution or elsewhere.

(2) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed.

(3) A student's CWS wages are earned when the student performs the work.

(4) An institution may pay a student after the student's last day of attendance for CWS wages earned while he or she was in attendance at the institution.

(b)(1) If an institution pays a student its share or his or her CWS wages by check, it shall pay the student at the same time it pays the Federal share.

(2) If an institution pays a student its CWS share for an award period in the form of tuition, fees, services, or equipment, it shall pay that share before the student's final payroll period.

(3) If an institution pays its CWS share in the form or prepaid tuition, fees, services, or equipment for a forthcoming academic period, it shall give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(c) A correspondence student shall submit his or her first completed lesson before receiving a payment.

(d) The institution may not obtain a student's power of attorney to authorize any disbursement of funds without prior approval from the Secretary.

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(Authority: 20 U.S.C. 1091, 42 U.S.C. 2753)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

*§ 675.17 Federal interest in allocated funds.

Except for funds received for the administrative cost allowance (see § 675.18(b)) and for certain activities under the Job Location and Development Programs, funds received by an institution under the CWS program are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e. serve as collateral) for any other purpose.

(Authority: 42 U.S.C. 2751-56)

§ 675.18 Use of funds.

(a) *General.* An institution may use its CWS allocation only for—

(1) Paying the Federal share of CWS wages;

(2) Carrying out the administrative activities described in paragraph (b)(4) of this section;

(3) Meeting the cost of a Job Location and Development program under Subpart B; and

(4) Transferring a portion of its CWS allocation to its SEOG allocation as described in paragraph (f) of this section.

(b) *Administrative cost allowance.* (1) An institution participating in the CWS program is entitled to an administrative cost allowance if it provides CWS employment to its students in that award year.

(2) For any award year the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG, and Perkins Loan programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(1) of this section, the institution's CWS expenditures under the community service learning program (§ 675.25), and the amount of loans made under the Perkins Loan program it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR Part 668.

(5)(i) In addition to the amount calculated in paragraph (b)(1) of this section, an institution's administrative cost allowance includes ten (10) percent of its expenditures under the community service learning program set forth in § 675.25.

(ii) This portion of its administrative cost allowance must be taken from the institution's CWS allocation.

(iii) The institution may use this portion of its administrative cost allowance to offset the costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs and to pay the administrative costs of conducting its community service learning program. These latter costs may include the costs of—

(A) Developing mechanisms to assure the academic quality of a student's experience;

(B) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(C) Collaborating with public and private nonprofit agencies in the planning and administering of these programs.

(c) *Carry forward funds.* (1) An institution may carry forward and expend in the next award year up to 10 percent of the sum of its initial and supplemental CWS allocations for the current award year.

(2) Before an institution may spend its current year CWS allocation, it shall spend any funds carried forward from the previous year.

(d) *Carry back funds.* An institution may carry back and expend in the previous award year up to 10 percent of the sum of its initial and supplemental CWS allocations for the current award year. The institution's official allocation letter represents the Secretary's approval to carry back funds.

(e) The institution may use the funds carried forward or carried back under paragraphs (c) and (d) of this section, respectively, for activities described in paragraph (a) of this section.

(f) *Transfer funds to SEOG.* (1) An institution may transfer up to 10 percent of the sum of its initial and supplemental CWS allocations for an award year to its SEOG program.

(2) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(3) An institution shall report any transferred funds on the Fiscal Operations Report required under § 675.19(b).

(4) An institution shall transfer back to the SEOG program any funds unexpended at the end of the award year that it transferred to the CWS program from the SEOG program.

(Authority: 20 U.S.C. 1095, 1096; 42 U.S.C. 2753, 2756, 2756b)

§ 675.19 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its CWS program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) If an institution uses a fiscal agent, that agent may perform only ministerial acts.

(3)(i) Except as provided in paragraph (a)(3)(ii) of this section, a separate bank account for CWS funds is not required. However, an institution shall notify any bank in which it deposits Federal funds of the account in which those funds are deposited by—

(A) Including in the name of the account the fact that Federal funds are deposited; or

(B) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(ii) If the Secretary determines that adequate accounting records are not maintained, the institution shall keep CWS funds in a separate bank account.

(b) *Records and reporting.* (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Include a certification that each student has worked and earned the amount being paid. The student's supervisor, an official of the institution or off-campus agency, shall sign the certification. The certification shall include or be supported by, for students paid on an hourly basis, a time record showing the hours each student worked in clock time sequence, or the total hours worked per day;

(ii) Include a payroll voucher containing sufficient information to support all payroll disbursements;

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see § 675.25(a));

(iv) Are reconciled at least monthly;

(v) Identify each student's account and status;

(vi) Show the eligibility of each student aided under the program; and

(vii) Show how the need was met for each student.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution must maintain on file all CWS employment applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS Programs (FISAP).

(5) The institution shall maintain all records supporting its application for funds under this part.

(c) *Retention of records.*—(1) *Records.* Each institution shall keep intact and accessible records of the application, the receipt, and the expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for audit questions, an institution shall keep records for an award year for five years after it submits its FISAP for that year.

*(3)(i) An institution may keep the records required in this section on microforms or it may keep its records in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

*(4) *Audit questions.* An institution shall keep records on any claim or expenditure questioned by Federal audit or program review until any audit questions are resolved.

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(Authority: 42 U.S.C. 2753 and 20 U.S.C. 1094 and 1232f)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 30183, Aug. 10, 1988; 53 FR 49147, Dec. 6, 1988]

§ 675.20 Eligible employers and general conditions and limitation on employment.

(a) *Eligible CWS employers.* A student may be employed under the CWS program by—

(1) The institution in which the student is enrolled;

(2) A Federal, State, or local public agency;

(3) A private nonprofit organization; or

(4) A private for-profit organization.

(b) *Agreement between institution and organization.*

(1) If an institution wishes to have its students employed under this part by a Federal, State or local agency, or a private nonprofit or for-profit organization, it shall enter into a written agreement with that agency or organization. The agreement must set forth the CWS work conditions (see Appendix B for a sample agreement). The agreement must indicate whether the institution or the agency or organization shall pay the students employed, except that the agreement between an institution and a for-profit organization must require the employer to pay the non-Federal share of the student earnings.

(2) The institution may enter into an agreement with an agency or organization that has professional direction and staff.

(3) The institution is responsible for ensuring that—

(i) Payment for work performed under each agreement is properly documented; and

(ii) Each student's work is properly supervised.

(4) The agreement between the institution and the employing agency or nonprofit organization may require the employer to pay—

(i) The non-Federal share of the student earnings; and

(ii) Required employer costs such as the employer's share of social security or workers' compensation.

(c) *CWS general employment conditions and limitation.* (1) Regardless of the student's employer, the student's work must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of—

(i) Type of work;

(ii) Geographical region;

(iii) Employee proficiency; and

(iv) Any applicable Federal, State, or local law.

(2) CWS employment may not—

(i) Impair existing service contracts;

(ii) Displace employees;

(iii) Fill jobs that are vacant because the employer's regular employees are on strike;

(iv) Involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction; or

(v) Include employment for the U.S. Department of Education.

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(Authority: 42 U.S.C. 2753)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 675.21 Institutional employment.

(a) An institution, other than a proprietary institution, may employ a student to work for the institution itself, including those operations, such as food service, cleaning, maintenance, or security, for which the institution contracts, if the contract specifies—

(1) The number of students to be employed; and

(2) That the institution selects the students to be employed and determines each student's pay rate.

(b) A proprietary institution may employ a student only in jobs that—

(1) Are on campus;

(2) Furnish student services;

(3) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and

(4) Do not involve the solicitation of potential students to enroll at the proprietary institution.

(Authority: 42 U.S.C. 2753)

§ 675.22 Employment provided by a Federal, State, or local agency, or a private nonprofit organization.

(a) If a student is employed by a Federal, State, or local public agency, or a private nonprofit organization, the work that the student performs must be in the public interest.

(b) *CWS employment in the public interest.* The Secretary considers work in the public interest to be work performed for the national or community welfare rather than work performed to benefit a particular interest or group. Work is not in the public interest if—

(1) It primarily benefits the members of a limited membership organization such as a credit union, a fraternal or religious order, or a cooperative;

(2) It is for an elected official who is not responsible for the regular administration of Federal, State, or local government;

(3) It is work as a political aide for any elected official;

(4) A student's political support or party affiliation is taken into account in hiring him or her;

(5) It involves any partisan or nonpartisan political activity or is associated with a faction in an election for public or party office; or

(6) It involves dlobbying on the Federal, State, or local level.

(Authority: 42 U.S.C. 2753)

§ 675.23 Employment provided by a private for-profit organization.

(a) An institution may use up to 25 percent of its CWS allocation and reallocation for an award year to pay the compensation of CWS students employed by a private for-profit organization.

(b) If a student is employed by a private, for-profit organization—

(1) The work that the student performs must be academically relevant to the student's educational program; and

(2) The private for-profit organization—

(i) Must provide the non-Federal share of the student's compensation; and

(ii) May not use any CWS funds to pay an employee who would otherwise by employed by that organization.

(Authority: 42 U.S.C. 2753)

§ 675.24 Establishment of wage rate under CWS.

(a) *Wage rates.* (1) Except as provided in paragraph (a)(3) of this section, an institution shall compute CWS compensation on an hourly wage basis for actual time on the job. An institution may not pay a student a salary, commission, or fee.

(2) An institution may not count fringe benefits as part of the wage rate.

(3) An institution may pay a graduate student it employs a salary or an hourly wage, in accordance with its usual practices.

(b) *Minimum wage rate.* The minimum wage rate for a student employee under the CWS program is the minimum wage rate required under section 6(a) of the Fair Labor Standards Act of 1938.

(Authority: 42 U.S.C. 2753)

§ 675.25 Earnings applied to cost of attendance.

(a)(1) The institution shall determine the amount of earnings from a CWS job to be applied to a student's cost of attendance (attributed earnings) by subtracting taxes and job related costs from the student's gross earnings.

(2) Job related costs are costs the student incurs because of his or her job. Examples are uniforms and transportation to and from work. Room and board during a vacation period may also be considered a job related cost if they would not otherwise be incurred except for the CWS employment.

(b) If a student is employed under CWS during a vacation or other period when he or she is not attending classes, the institution shall apply the attributed earnings (earnings minus taxes and job related costs) to the cost of attendance for the next period of enrollment.

(Authority: 42 U.S.C. 2753)

§ 675.26 CWS Federal share limitations.

(a)(1) Unless the Secretary approves a higher share under paragraph (d) of this section, the Federal share of CWS compensation paid to a student employed other than by a for-profit organization may not exceed—

(i) 80 percent for award years 1987-88 and 1988-89, 75 percent for award years 1989-90, and 70 percent for award year 1990-91 and subsequent award years; or

(ii) 90 percent under a community service learning program described in § 675.28 if the amount paid to students under the community service learning program does not exceed 10 percent of the institution's CWS allocation or reallocation for an award year.

(2) The Federal share of the compensation paid to a student employed by a for-profit organization may not exceed 60 percent for award years 1987-88 and 1988-89, 55 percent for award year 1980-90, and 50 percent for award year 1990-91 and subsequent award years.

(3) An institution may not use CWS funds to pay a student after he or she has, in addition to other resources, earned $200 or more over his or her financial need.

(b) The institution may not include the following when determining the Federal share:

(1) Fringe benefits such as paid sick days, paid vacations, or paid holidays.

(2) The employer's share of social security, workers' compensation, retirement, or any other welfare or insurance program that the employer must pay on account of the student employee.

(c) If an institution receives more money under an employment agreement from an off-campus employer than required employer costs, its not-Federal share, and any share of administrative costs that the employer agreed to pay, the excess funds must be—

(1) Used to reduce the Federal share on a dollar-for-dollar basis;

(2) Held in trust for off-campus student employment next year; or

(3) Refunded to the off-campus employer.

(d) For each award year, the Secretary authorizes a Federal share of 100 percent of the compensation earned by a student under this part if—

(1) The work performed by the student is for the institution itself, for a Federal, State or local public agency, or for a private nonprofit organizations; and

(2) The institution at which the student is enrolled—

(i) Is designated as an eligible institution under the Strengthening Institutions program (34 CFR Part 607), the Strengthening Historically Black Colleges and Universities program (34 CFR Part 608), or the Strengthening Historically Black Graduate Institutions program (34 CFR Part 609); and

(ii) Requests that increased Federal share as part of its regular CWS funding application for that year.

(Authority: 20 U.S.C. 1069a, 42 U.S.C. 2753)

§ 675.27 Nature and source of institutional share.

(a)(1) An institution may use any resource available to it, except funds allocated under the CWS program, to pay the institutional share of CWS compensation to its students. The institutional share may be paid in the form of services and equipment, e.g., tuition, room, board, and books.

(2) The institution shall document all amounts claimed as non-cash contributions.

(3) Non-cash compensation may not include forgiveness of a charge assessed solely because of a student's employment under the CWS program.

(b) An institution may not solicit or accept fees, commission, contributions, or gifts as a condition for CWS employment, nor permit any organization with which it has an employment agreement to do so.

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(Authority: 42 U.S.C. 2753)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 675.28 Community service learning program.

(a) From its allocation under the CWS program, an institution may employ its students in a community service learning program designed to develop, improve or expand services for low-income individuals and families, or to solve particular programs related to the needs of low-income individuals.

(b) A community service learning program is a program of student work that—

(1) Provides tangible community services for or on behalf of low-income individuals; and

(2) Provides students with work-learning opportunities related to their educational or vocational programs or goals.

(c) As used in this section—

(1) A low-income individual is an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the proverty level detemined by using criteria of poverty established by the Bureau of the Census; and

(2) Community services—

(i) Are direct services, planning or applied research activities, designed to—

(A) Improve the quality of life for community residents, particularly low-income individuals; or

(B) Solve particular problems relating to the needs of low-income individuals; and

(ii) May include activities related to such fields as health care, education, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development and community improvement.

(Authority: 42 U.S.C. 2756a)

Subpart B—Job Location and Development Programs

§ 675.31 Purpose.

(a) The purpose of the regular job location and development program is to expand off-campus job opportunities for students enrolled in eligible institutions of higher education who want jobs, regardless of their financial need.

(b) The purpose of the community services job location and development program is to locate and develop community services jobs for students qualifying as eligible students under § 675.9.

(Authority: 42 U.S.C. 2756)

§ 675.32 Program description.

(a) *Regular job location and development program.* An institution may expend up to the lesser of $30,000 or 10 percent of its CWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions, locates and develops jobs for currently enrolled students.

(b) *Community services job location and development program.* (1) An institution may expend up to the lesser of $20,000 or 10 percent of its CWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions and through consultation with local nonprofit, governmental, educational, and community-based organizations, locates and develops community services jobs for students qualifying as eligible students under § 675.9.

(2) As used in this subpart, the term "community services" means services that—

(i) Are identified by the institution through formal or informal consultation with local nonprofit, governmental and community-based organizations; and

(ii) Are designed to—

(A) Improve the quality of life for community residents, particularly low-income individuals; or

(B) Solve particular problems related to the needs of the community residents including, but not limited to, such fields as health care, child care, literacy training, education (including tutorial services), housing and neighborhood improvement, rural development, and community improvement.

(Authority: 42 U.S.C. 2756)

§ 675.33 Allowable costs.

(a)(1) *Allowable and unallowable costs.* Except as provided in paragraph (a)(2) of this section, costs reasonably related to carrying out the programs described in § 675.32 are allowable.

(2) Costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs are not allowable.

(b) *Federal share of allowable costs.* An institution may use CWS funds, as provided in § 675.32, to pay up to 80 percent of allowable costs.

(c) *Institutional share of allowable costs.* An institution's share of allowable costs may be in cash or in the form of services. The institution shall keep records documenting the amount and source of its share.

(Authority: 42 U.S.C. 2756)

§ 675.34 Multi-institutional job location and development programs, or arrangements with nonprofit organizations.

(a) An institution participating in the CWS program may enter into a written agreement to establish and operate job location programs for its students with—

(1) Other participating institutions; or

(2) A nonprofit organization. The nonprofit organization must have professional direction and staff.

(b) The agreement described in paragraph (a) of this section must—

(1) Designate the administrator of the program; and

(2) Specify the terms, conditions, and performance standards of the program.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions or with a nonprofit organization.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 42 U.S.C. 2756)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 675.35 Agreement.

(a) A CWS participating institution, to establish or expand these programs, shall enter into an agreement with the Secretary.

(b) The agreement must provide—

(1) That the institution will administer the programs accordance with the HEA and the provisions of this part;

(2) That the institution will submit to the Secretary an annual report on the use of the funds and an evaluation of the effectiveness of the programs in benefiting the institution's students; and

(3) Satisfactory assurances that—

(i) The institution will not use program funds to locate and develop jobs at the institution under the regular job location and development program described in § 675.32(a);

(ii) The institution will use program funds to locate and develop jobs for students during and between periods of attendance at the institution, not upon graduation;

(iii) The program will not displace employees or impair existing service contracts;

(iv) Program funds can realistically be expected to generate total student wages exceeding the total amount of the Federal funds spent under this subpart; and

(v) If the institution uses Federal funds to contract with another organization, suitable performance standards will be part of that contract.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 42 U.S.C. 2756)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 675.36 Procedures and records.

Procedures and records concerning the administration of a JLD project established and operated under this subpart are governed by applicable provisions of § 675.19.

(Authority: 42 U.S.C. 2756a)

§ 675.37 Termination and suspension.

(a) If the Secretary terminates or suspends an institution's eligibility to participate in the CWS program, the action also applies to the institution's job location and development programs.

(b) The Secretary pays an institution's financial obligations incurred and allowable before the termination but not incurred—

(1) During a suspension; or

(2) In anticipation of a suspension.

(c) However, the institution must cancel as many outstanding obligations as possible.

(Authority: 42 U.S.C. 2756a)

APPENDIX A TO PART 675—[RESERVED]

APPENDIX B TO PART 675—MODEL OFF-CAMPUS AGREEMENT

(The paragraphs below are suggested as models for the development of a written agreement between an institution of higher education and a Federal, State, or local public agency or private nonprofit organization which employs students participating in the College Work-Study program. Institutions and agencies or organizations may devise additional or substitute paragraphs which are not inconsistent with the statute or regulations.)

This agreement is entered into between ————————, hereinafter known as the "Institution," and ————————, hereinafter known as the "Organization," a (Federal, State, or local public agency), (private nonprofit organization), (strike one), for the purpose of providing work to students eligible for the College Work-Study program [CWS].

Schedules to be attached to this agreement from time to time must be signed by an authorized official of the institution and the organization and must set forth—

(1) brief descriptions of the work to be performed by students under this agreement;

(2) the total number of students to be employed;

(3) the hourly rates of pay, and

(4) the average number of hours per week each student will be used.

These schedules will also state the total length of time the project is expected to run, the total percent, if any, of student compensation that the organization will pay to the institution, and the total percent, if any, of the cost of employers' payroll contribution to be borne by the organization. The institution will inform the organization of the maximum number of hours per week a student may work.

Students will be made available to the organization by the institution to perform specific work assignments. Students may be removed from work on a particular assignment or from the organization by the institution, either on its own initiative or at the request of the organization. The organization agrees that no student will be denied work or subjected to different treatment under this agreement on the grounds of race, color, national origin, or sex. It further agrees that it will comply with the provisions of the Civil Rights Act of 1964 (Pub. L. 88-352; 78 Stat. 252) and Title IX of the Education Amendments of 1972 (Pub. L. 92-318) and the Regulations of the Department of Education which implement those Acts.

(Where appropriate any of the following three paragraphs or other provisions may be included.)

(1) Transportation for students to and from their work assignments will be provided by the organization at its own expense and in a manner acceptable to the institution.

(2) Transportation for students to and from their work assignments will be provided by the institution at its own expense.

(3) Transportation for students to and from their work assignments will not be provided by either the institution or the organization.

(Whether the institution or the organization will be considered the employer of the students covered under the agreement depends upon the specific arrangement as to the type of supervision exercised by the organization. It is advisable to include some provision to indicate the intent of the parties as to who is considered the employer. As appropriate, one of the following two paragraphs may be included.)[1]

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[1] It should be noted that although the following paragraphs attempt to fix the identity of the employer, they will not necessarily be determinative if the actual facts indicate otherwise. Additional wording which specifies the employer's responsibility in case of injury on the job may also be advisable, since Federal funds are not available to pay for hospital expenses or claims in case of

Continued

(1) The institution is considered the employer for purposes of this agreement. It has the ultimate right to control and direct the services of the students for the organization. It also has the responsibility to determine whether the students meet the eligibility requirements for employment under the College Work-Study program, to assign students to work for the organization, and to determine that the students do perform their work in fact. The organization's right is limited to direction of the details and means by which the result is to be accomplished.

(2) The organization is considered the employer for purposes of this agreement. It has the right to control and direct the services of the students, not only as to the result to be accomplished, but also as to the means by which the result is to be accomplished. The insitution is limited to determining whether the students meet the eligibility requirements for employment under the College Work-Study program, to assigning students to work for the organization, and to determining that the students do perform their work in fact.

(Wording of the following nature may be included, as appropriate, to locate responsibility for payroll disbursements and payment of employers' payroll contributions.)

Compensation of students for work performed on a project under this agreement will be disbursed—and all payments due as an employer's contribution under State or local workers' compensation laws, under Federal or State social security laws, or under other applicable laws, will be made—by the (organization) (institution) (strike one).

(Where appropriate any of the following paragraphs may be included.)

(1) At times agreed upon in writing, the organization will pay to the institution an amount calculated to cover the organization's share of the compensation of students employed under this agreement.

(2) In addition to the payment specified in paragraph (1) above, at times agreed upon in writing, the organization will pay, by way of reimbursement to the institution, or in advance, an amount equal to any and all payments required to be made by the institution under State or local workers' compensation laws, or under Federal or State social security laws, or under any other applicable laws, on account of students participating in projects under this agreement.

(3) At times agreed upon in writing, the institution will pay to the organization an amount calculated to cover the Federal share of the compensation of students employed under this agreement and paid by the organization. Under this arrangement the organization will funish to the institution for each payroll period the following records for review and retention:

(a) Time reports indicating the total hours worked each week in clock time sequence and containing the supervisor's certification as to the accuracy of the hours reported;

(b) A payroll form identifying the period of work, the name of each student, each student's hourly wage rate, the number of hours each student worked, each student's gross pay, all deductions and net earnings, and the total Federal share applicable to each payroll;[2] and

(c) Documentary evidence that students received payment for their work, such as photographic copies of cancelled checks.

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

NOTE: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Sec.

676.1 Purpose and identification of common provisions.
676.2 Definitions.
*676.3 Application.
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676.8 Program participation agreement.
676.9 Student eligibility.
676.10 Selection of students for SEOG awards.
676.11—676.13 [Reserved]
676.14 Overaward.
*676.15 Coordination with BIA grants.
676.16 Payment of an SEOG.

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injury on the job. In this connection it may be of interest that one or more insurance firms in at least one State have in the past been willing to write a workers' compensation insurance policy which covers a student's injury on the job regardless of whether it is the institution or the organization which is ultimately determined to have been the student's employer when he or she was injured.

[2] These forms, when accepted, must be countersigned by the institution as to hours worked as well as to the accuracy of the total Federal share which is to be reimbursed to the organization or agency.

676.17 Federal interest in allocated funds.
676.18 Use of funds.
676.19 Fiscal procedures and records.
676.20 Minimum and maximum SEOG awards.
676.21 SEOG Federal share limitations.

AUTHORITY: 20 U.S.C. 1070b—1070b-3, unless otherwise noted.

SOURCE: 52 FR 45778, Dec. 1, 1987, unless otherwise noted.

§ 676.1 Purpose and identification of common provisions.

(a) The Supplemental Educational Opportunity Grant (SEOG) Program awards grants to financially needy students attending institutions of higher education to help them pay their educational costs.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(Authority: 20 U.S.C. 1070b)

§ 676.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Award year
Clock hour
College Work-Study (CWS) Program
Enrolled
Guaranteed Student Loan (GSL) Program
HEA
Income Contingent Loan Program
Pell Grant Program
Perkins Loan Program
PLUS Program
Secretary
SLS Program

(b) The Secretary defines other terms used in this part as follows:

**Expected family contribution (EFC):* The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

**Financial need:* The difference between a student's cost of attendance and his or her EFC.

**Full-time student:* An enrolled student who is carrying a full-time academic work load (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements;

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarterly system.

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one.

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

**Institution of higher education (institution):* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

* *Need-based employment:* Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

* *Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and

the midpoint or between the midpoint and the end of an academic year.

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

(Authority: 20 U.S.C. 1087aa-1087ii)

[52 FR 45778, Dec. 1, 1987, as amended at 53 FR 52582, Dec. 28, 1988]

*§ 676.3 Application.

(a) To participate in the SEOG program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation of reallocation of the SEOG program funds under section 413D of the HEA.

(Authority: 20 U.S.C. 1070b-3)

§ 676.4 Allocation and reallocation.

(a) The Secretary allocates and reallocates funds to institutions participating in the Supplemental Educational Opportunity Grant program in accordance with section 413D of the HEA.

(b) As used in section 413D of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.
(2) Business.
(3) Trade/Technical.
(4) Art Schools.
(5) Other Proprietary Institutions.
(6) Non-Proprietary Institutions.

(c) *Payment to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(d) *Authority to expend funds.* An institution shall not use funds allocated or reallocated for an award year—

(1) To make SEOG disbursements to students in any subsequent award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 20 U.S.C. 1070b-3)

§§ 676.5—676.7 [Reserved]

§ 676.8 Program participation agreement.

To participate in the SEOG program, an institution shall enter into a participation agreement with the Secretary. The participation agreement provides, among other things, that the institution shall—

(a) Use the funds it receives solely for the purposes specified in this part; and

(b) Administer the SEOG program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR Part 668.

(Authority: 20 U.S.C. 1070b *et seq.*, and 1094)

§ 676.9 Student eligibility.

A student at an institution of higher education is eligible to receive an SEOG for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate student at the institution; and

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1070b-1, 1070b-2 and 1091)

§ 676.10 Selection of students for SEOG awards.

(a)(1) In selecting among eligible students for SEOG awards in each award year, an institution shall select those students with the lowest expected family contributions who will also receive Pell Grants in that year.

(2) If the institution has SEOG funds remaining after giving SEOG awards to all the Pell Grant recipients at the institution, the institution shall award the remaining SEOG funds to those eligible students with the lowest expected family contributions who will not receive Pell Grants.

(b) If an institution's allocation of SEOG funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall, consistent with the requirements of paragrah (a) of this section, award a reasonable proportion of its allocation to those students.

(Authority: 20 U.S.C. 1070b-2)

§§ 676.11—676.13 [Reserved]

§ 676.14 Overaward.

*(a) *Overaward prohibited.* (1) An institution may only award or disburse an SEOG to a student if the SEOG, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing an SEOG to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it award SEOG funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(3) If a student receives resources at any time during the award period that were not considered in calculating the SEOG award, and the total resources including SEOG exceed the student's need, the overaward is the amount that exceeds need.

*(b) *Resources.* (1) Except as provided in paragraph (b)(2) of this section, the Secretary considers that "resources" include but are not limited to any—

(i) Funds a student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowships or assistantships;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from need-based employment; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (b)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Supplemental Loan for Students (SLS), State-sponsored or private loan, PLUS loan, or non-need-based ICL as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

*(c) *Treatment of resources in excess of need.* An institution shall take the following steps when it learns that a student has received additional resources not included in the calculation of SEOG eligibility that would result in the student's total resources exceeding his or her financial need by more than $200:

(1) The institution shall decide whether the student has increased fi-

nancial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $200 after the institution takes the steps required in paragraphs (c)(1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $200 as an overpayment.

(d) *Liability for and recovery of overpayments.* (1) A student is liable for any SEOG overpayment made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its SEOG account even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by making a reasonable effort to contact the student and recover the overpayment. The Secretary regards a written demand to the student for repayment of the overawarded funds, with notice that failure to make that repayment will render the student ineligible for further Title IV aid, to constitute such a reasonable effort.

(Authority: 20 U.S.C. 1070b-1)

[53 FR 52582, Dec. 28, 1988]

*§ 676.15 Coordination with BIA grants.

(a) To determine the amount of an SEOG for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with package prepared for students in similar circumstances who are not eligible for BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1070b-1).

§ 676.16 Payment of an SEOG.

(a)(1) Except as provided in paragraphs (b) and (e) of this section, an institution shall pay in each payment period a portion of an SEOG awarded for a full academic year.

(2) The institution shall determine the amount paid each payment period by the following fraction:

$$\frac{\text{SEOG}}{\text{N}}$$

Where:

SEOG=the total SEOG awarded for an academic year and N=the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may pay the student, within each payment period, at such times and in such amounts as it determines best meets the student's needs.

(b) If a student incurs uneven cost or resources during an academic year and needs additional funds in a particular payment period, the institution may pay SEOG funds to the student for those uneven costs.

(c) The institution may pay the student directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid.

(d)(1) An institution may not pay an SEOG to student for a payment period until the student registers for that period.

(2) The earliest an institution may directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution may pay a registered student by crediting the student's account is three weeks before the first day of classes of a payment period.

(e)(1) The institution shall return to the SEOG account any funds paid to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(f) Only one payment is necessary if the total amount the institution awards a student for an academic year under the SEOG and NDSL program is less than $501.

(g) A correspondence student shall submit his or her first completed lesson before receiving an SEOG payment.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 1070b. 1091)

[52 FR 45778, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

*§ 676.17 Federal Interest in allocated funds.

Except for funds received for the administrative cost allowance (see § 676.18(b)), funds received by an institution under the SEOG program are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(Authority: 20 U.S.C. 1070b-1070b-3)

§ 676.18 Use of funds.

(a) *General.* An institution may use its SEOG allocation and reallocation only for—

(1) Making grants to eligible students;

(2) Carrying out the administrative activities described in paragraph (b)(4) of this section; and

(3) Transferring a portion of its SEOG allocation to its CWS allocation as described in paragraph (c) of this section.

(b) *Administrative cost allowance.* (1) An institution participating in the SEOG program is entitled to an administrative cost allowance for an award year if it awards grants to students in that year.

(2) For any award year, the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG, and Perkins Loan programs; plus

(ii) four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution may not include, in calculating this allowance in paragraph (b)(1) of this section, the institution's CWS expenditures under the community service learning program (34 CFR 675.25) and the amount of loans made under the Perkins Loan Program that it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR 668.

(c) *Transfer of funds to CWS.* (1) An institution may transfer up to 10 percent of the sum of its SEOG allocation for an award year to its CWS program.

(2) An institution shall use transferred funds according to the requirements of the program to which they were transferred.

(3) An institution shall report any transferred funds on the Fiscal Operations Report required under § 676.19.

(4) An institution shall transfer back to the CWS program any funds unexpended at the end of the award year that it transferred to the SEOG program from the CWS program.

(Authority: 20 U.S.C. 1070b *et seq.*, 1095 and 1096)

§ 676.19 Fiscal procedures and records.

(a) *Fiscal Procedures.* (1) In administering its SEOG program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section, a separate bank account for SEOG funds is not required. However, an institution shall notify any bank in which it deposits Federal funds of the accounts in which those funds are deposited by—

(A) Including in the name of the account the fact that Federal funds are desposited; or

(B) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(ii) If the Secretary determines that adequate accounting records are not maintained, the institution shall keep SEOG funds in a separate bank account.

(b) *Record and reporting.* (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) The institution shall maintain on file all SEOG applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS Programs (FISAP).

(4) The institution shall maintain all records supporting its application for funds under this part.

(5) Each year an institution shall submit a Fiscal Operation Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(c) *Retention of records.*—(1) *Records.* Each institution shall keep intact and accessible records of the application, the receipt, and the expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

•(2) *Period of retention.* Except for audit questions, an institution shall keep records for an award year for five years after it submits its FISAP for that year.

•(3)(i) An institution may keep the records required in this section on microforms or it may keep its records in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

(4) *Audit questions.* An institution shall keep records on any claim or ex-

penditure questioned by Federal audit or program review until any audit questions are resolved.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 1070b, 1094, and 1232f)

[52 FR 45778, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988]

§ 676.20 Minimum and maximum SEOG awards.

(a) An institution may award an SEOG for an academic year in an amount it determines a student needs to continue his or her studies. However, an SEOG may not be awarded for a full academic year that is—

(1) Less than $100; or

(2) More than $4,000.

(b) For a student enrolled for less than a full academic year, the minimum allowable SEOG may be proportionately reduced.

(Authority: 20 U.S.C. 1070, 1070b-1)

§ 676.21 SEOG Federal share limitations.

(a) Except as provided in paragraph (b) of this section—

(1) For award years 1987-88 and 1988-89, the Federal share of SEOGs awarded to students by an institution equals 100 percent of the amount of the SEOG awards made by that institution;

(2) For award year 1989-90, the Federal share of SEOG awards made by an institution may not exceed 95 percent of the amount of those awards;

(3) For award year 1990-91, the Federal share of SEOG awards made by an institution may not exceed 90 percent of the amount of those awards; and

(4) For award year 1991-1992 and subsequent award years, the Federal share of SEOG awards made by an institution may not exceed 85 percent of the amount of those awards.

(b) Beginning with the 1989-90 award year, the Secretary authorizes, for each award year, a Federal share of 100 percent of the SEOGs awarded to students by an institution that—

(1) Is designated as an eligible institution under the Strengthening Institutions program (34 CFR Part 607) or the Strengthening Historically Black Colleges and Universities program (34 CFR Part 608); and

(2) Requests that increased Federal share as part of its regular SEOG funding application for that year.

(c) The non-Federal share of SEOG awards must be made from the institution's own resources, which include for this purpose—

(1) Institutional grants and scholarships;

(2) Tuition or fee waivers;

(3) State scholarships; and

(4) Foundation or other charitable organization funds.

(Authority: 20 U.S.C. 1070b-2 and 1069a)

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

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Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

Subpart A—Purpose and Scope

Source: 51 FR 40888, Nov. 10, 1986, unless otherwise noted.

§ 682.100 The Guaranteed Student Loan and PLUS Programs.

(a) This part governs two programs in which lenders use their own funds to make loans to enable students to pay the costs of attending postsecondary schools:

(1) The Guaranteed Student Loan Program (GSLP), which encourages the making of loans to undergraduate, graduate, and professional students.

(2) The PLUS Program, which encourages the making of loans to independent undergraduate students, graduate and professional students, and parents of dependent undergraduate students to help pay for the students' cost of education.

(b)(1) A guarantee agency guarantees lenders against losses due to default by the borrower on GSLP and PLUS Program loans. If the guarantee agency meets certain Federal requirements, the guarantee agency is reimbursed by the Secretary for all or part of the default claims it pays.

(2) The Secretary guarantees lenders against losses, within the GSLP, on Federal Insured Student Loan Program (FISLP) loans and, within the PLUS Program, on Federal PLUS Program loans. The FISLP and the Federal PLUS Program are authorized to operate in States not served by a guarantee agency program. In addition, the FISLP is authorized, under limited circumstances, to operate in States in which a guarantee agency program does not serve all eligible students.

(Authority: 20 U.S.C. 1071 to 1087-2)

§ 682.101 Participation in the Guaranteed Student Loan and PLUS Programs.

(a) Banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State and private nonprofit agencies may make loans.

(b) Educational institutions, including most colleges, universities, graduate and professional schools, and many vocational, technical, and correspondence schools, are eligible to participate as schools enabling an eligible student or parent to obtain a loan to pay for the student's costs of education.

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the GSLP and the PLUS Program. Parents of eligible dependent undergraduate students may borrow under the PLUS Program.

(Authority: 20 U.S.C. 1071 to 1087-2)

§ 682.102 Obtaining and repaying a loan.

(a) *GSLP application.* Generally, to obtain a GSLP loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(b) *PLUS Program application.* Generally, to obtain a PLUS Program loan, a student completes an application and submits it to the school for certification. If the loan is to be made to the student's parent(s), both the student and the parent(s) complete the application before submitting it to the school. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(c) *Repaying a loan.* (1) *General.* Generally, the borrower is obligated to repay the full amount of the loan, collection costs chargeable to the borrower, and any interest not payable by the Secretary. The borrower's obligation to repay is cancelled if the borrower dies, becomes totally and permanently disabled, or has the loan discharged in bankruptcy.

(2) *GSLP repayment.* Generally, a borrower is not required to make any payments on a GSLP loan during the time the borrower is in school. In most cases the Secretary pays the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no payments are required. At the end of the grace period, the repayment period begins. During the repayment period the borrower pays both the principal and the interest accruing on the loan.

(3) *PLUS repayment.* The Secretary does not pay the interest on a PLUS Program loan on behalf of the borrower. The first payment is due on a PLUS Program loan within 60 days after the loan is disbursed.

(4) *Default.* If a borrower defaults on a loan, the guarantee agency or the Secretary reimburses the lender for the amount of its loss. The guarantee agency or the Secretary then collects the amount owed from the borrower.

(Authority: 20 U.S.C. 1071 to 1087-2)

§ 682.103 Applicability of subparts.

(a) Subpart B contains general provisions that are applicable to all GSLP and PLUS Program participants.

(b) Guarantee agency programs are also subject to Subparts C, D, F, G and H.

(c) The FISLP and the Federal PLUS Program are also subject to Subparts C, E, F, G, and H.

(d) Schools are specifically addressed in Subpart F.

(Authority: 20 U.S.C. 1071 to 1087-2)

§ 682.104 Applicability of regulations to the Supplemental Loans for Students Program.

The Supplemental Loans for Students (SLS) program is a continuation of the portion of the predecessor PLUS Program that provided for loans to student borrowers. Accordingly, the provisions of the regulations in this part, Part 600, and Part 668, applicable to loans made to students under the PLUS Program apply to loans made under the SLS Program, except where inconsistent with the Act.

(Authority: 20 U.S.C. 1078-1, 1082)

[54 FR 24120, June 5, 1989]

Subpart B—General Provisions

SOURCE: 51 FR 40889, Nov. 10, 1986, unless otherwise noted.

§ 682.200 Definitions.

(a) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR Part 668:

Academic year
Campus-based Programs

Clock hour
College Work-Study Program
Dependent student
Enrolled
Guaranteed Student Loan Program
Independent student
Institution of higher education
National Direct Student Loan Program
Pell Grant Program
PLUS Program
Secretary
State
State Student Incentive Grant Program
Supplemental Educational Opportunity Grant Program
Vocational school

(b) The following definitions also apply to this part: *Act:* Title IV, Part B of the Higher Education Act of 1965, as amended, 20 U.S.C. 1071, *et seq.*

Actual interest rate: The annual interest rate a lender charges on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate: The maximum annual interest rate that a lender may charge under the Act on a loan.

Borrower: A student or parent to whom a GSLP or PLUS Program loan is made.

Co-maker: One of two individuals who are joint borrowers on a PLUS Program loan and who are equally liable for repayment of the loan.

Default: The failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the Secretary or guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for—

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Disbursement: The transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer.

Endorser: A signer of a promissory note who is secondarily liable for a loan obligation.

Escrow agent: A guarantee agency that receives the proceeds of a GSLP loan as an agent of an eligible lender for the purpose of transmitting those proceeds to the borrowers.

Estimated cost of attendance: (1) Except as provided in paragraph (2) of this definition, the tuition and fees applicable to a student, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses may include, but are not limited to: reasonable transportation and commuting costs; costs for room, board, books, and supplies; the insurance premium for the loan; and, if applicable, the origination fee for the loan. These expenses may not include the purchase of a motor vehicle.

(2) For a student enrolled in a correspondence study program, only the contract price of the program, the insurance premium for the loan, and, if applicable, the origination fee for the loan. However, other costs described in paragraph (1) of this definition incurred by the student in fulfilling a required period of residential training in connection with the correspondence study program may also be included in the estimated cost of attendance.

Estimated financial assistance: The estimated amount of assistance that a student has been or will be awarded during the period of enrollment for which the loan is sought from Federal, State, institutional or other scholarship, grant, work, or loan programs, including but not limited to—

(1) Any Social Security benefits paid to, or on account of, the student that would not be paid if he or she were not a student;

(2) Veterans' educational benefits paid under Chapters 30, 31, 32, 34, and 35 of title 38 of the United States Code;

(3) Educational benefits paid under Chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(4) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under Chapter 2 of title 10 and Chapter 2 of title 37 of the United States Code;

(5) The estimated amount of other Federal student financial aid, including but not limited to Pell Grants and campus-based aid, which the student would be expected to receive if the

student applied, whether or not the student has applied for that aid; and

(6) GSLP and PLUS loan proceeds withheld by the lender and applied towards an origination fee or insurance premium, if these costs are included in computing the borrower's estimated cost of attendance.

Foreign school: A school not located in a State.

Full-time student: (1) A student enrolled in an institution of higher education (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload as determined by the school under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research or special studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(2) A student enrolled in a vocational school (other than a student enrolled in a program of study by correspondence) who is carrying a workload of not less than 24 clock-hours per week or 12 semester or quarter hours of instruction, or its equivalent.

Grace period: The period that begins on the day on which a GSLP borrower ceases to be enrolled as at least a half-time student (or a full-time student, if so required by the applicable guarantee agency) at a participating school and ends on the day that the repayment period begins. See also "Post-deferment grace period."

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

Guarantee agency: A State or private nonprofit organization that has an agreement with the Secretary to administer a loan guarantee program under the Act.

Half-time student: A student who is enrolled in a participating school, is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full time student. A student enrolled solely in an eligible program of study by correspondence is considered a half-time student.

Holder: An eligible lender in possession of a GSLP or PLUS Program loan.

Legal guardian: An individual appointed by a court to be a "guardian" of a person and specifically required by the court to use his or her financial resources for the support of that person.

Lender: (1) The term "eligible lender" is defined in section 435(g) of the Act.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, or a credit union—

(i) The term "subject to examination and supervision" means "subject to examination and supervision in its capacity as a lender;" and

(ii) The term "does not have as its primary consumer credit function the making or holding of loans made to students under this part" means—

(A) Does not, in any calendar year, make or purchase GSLP or PLUS Program loans that total more than one-half of its consumer credit loan dollar volume for that year, including home mortgages; and

(B) Does not, at any time, hold GSLP or PLUS Program loans that total more than one-half of its consumer credit loan portfolio, including home mortgages.

(3) The corporate parent or other owner of a school that qualifies as an eligible lender under section 435(g)(1)(E) of the Act is not an eligible lender unless the corporate parent or owner itself qualifies as an eligible lender under section 435(g) of the Act.

National credit bureau: A credit reporting agency with a service area that emcompasses more than a single state or region of the country.

National of the United States: (1) A citizen of the United States; or

(2) As defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

Origination: A special relationship between a school and a lender, in which the lender delegates to the school, or to an entity or individual affiliated with the school, substantial functions or responsibilities normally performed by lenders before making loans. In this situation, the school is considered to have "originated" a loan made by the lender. The Secretary determines that "origination" exists if, for example—

(1) A school determines who will receive a loan and the amount of the loan; or

(2) The lender has the school verify the identity of the borrower or complete forms normally completed by the lender.

Origination fee: A fee which a lender is allowed to charge a GSLP borrower under section 438 of the Act.

Parent: A student's mother, father, or legal guardian. A parent by adoption is considered to be a student's mother or father.

Participating school: A school that has entered into an agreement with the Secretary under § 682.600.

Post-deferment grace period: For a loan made prior to October 1, 1981, a period of six consecutive months beginning on the day following the last day of an authorized deferment period.

School: (1) An educational institution that is—

(i) An institution of higher education or a vocational school, as those terms are defined in 34 CFR Part 668; or

(ii) With respect to students who are nationals of the United States, a school outside the United States that is comparable to an institution of higher education or to a vocational school and that has been approved by the Secretary for purposes of the GSLP and the PLUS Program.

(2) The term includes only those individual units or programs within a school that have been determined by the Secretary to meet all the requirements for school eligibility.

(3) A school that employs or uses commissioned salespersons to promote the availability of the GSLP or the PLUS Program is not eligible to participate in those programs. For this purpose—

(i) A "commissioned salesperson" is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student enrollments, or student acceptances for enrollment; and

(ii) "Promote the availability" means providing prospective or enrolled students with application forms, names of eligible lenders, or other information designed to encourage persons to finance their education with a GSLP or PLUS Program loan. This term does not include providing general financial aid information to prospective or enrolled students.

School lender: A school, other than a correspondence school, that has been approved as a lender and has entered into a contract of guarantee under this part with the Secretary or a similar agreement with a guarantee agency.

State lender: In any State, a single State agency or private nonprofit agency designated by the State that has been approved as a lender and has entered into a contract of guarantee under this part with the Secretary or a similar agreement with a guarantee agency.

Totally and permanently disabled: The inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

Undergraduate student: A student who is enrolled at a school in a course or program of study, at or below the baccalaureate level, that usually does not exceed four academic years, or is up to five academic years in length and is designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first four academic years.

(Authority: 8 U.S.C. 1101; 20 U.S.C. 1070 to 1087-2, 1088-1098, 1141)

§ 682.201 Eligible borrowers.

(a) *Student borrower.* A student is eligible to receive a GSLP loan, and an independent undergraduate student or a graduate or professional student is eligible to receive a PLUS Program loan, if the student—

(1) Is enrolled or accepted for enrollment on at least a half-time basis at a participating school, and meets the requirements of paragraph (c) of this section;

(2) Provides his or her social security number;

(3) Authorizes the school in writing to pay directly to the lender that portion of any refund of school charges that is allocable to the loan, in accordance with 34 CFR Part 668;

(4) Meets the qualifications pertaining to citizenship and residency status, set forth in paragraph (d) of this section;

(5) Meets the qualifications concerning defaults and overpayments, set forth in paragraphs (e) and (f) of this section;

(6) Complies with the requirements pertaining to registration with the Selective Service, set forth in 34 CFR Part 668;

(7) Complies with the requirements for submission of a Statement of Educational Purpose, set forth in § 682.203; and

(8) In the case of an undergraduate student who seeks a GSLP loan for the cost of attendance at a school that participates in the Pell Grant Program, receives a preliminary or final determination from the school of the student's eligibility or ineligibility for a Pell Grant.

(b) *Parent borrower.* A parent is eligible to receive a PLUS Program loan if the parent—

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets all of the qualifications set forth in paragraphs (a)(1) through (6) of this section;

(2) Provides his or her social security number;

(3) Meets the qualifications pertaining to citizenship and residency status set forth in paragraph (d) of this section;

(4) Meets the qualifications concerning defaults and overpayments set forth in paragraphs (e) and (f) of this section; and

(5) Complies with the requirements for submission of a Statement of Educational Purpose set forth in § 682.203.

(c) *Enrollment status.* To be eligible as a student or a borrower under the GSLP or the PLUS Program, a student must—

(1) If currently enrolled, be maintaining satisfactory progress, as determined by the school;

(2) If enrolled or accepted for enrollment in a foreign school, be a national of the United States; and

(3) If enrolled in a flight school program at a vocational school or an institution of higher education, meet the additional requirements set forth in paragraph (g) of this section.

(d) *Citizenship and residency status.* Each borrower, and each student for whom a parent is borrowing, must be—

(1) A national of the United States;

(2) A permanent resident of the United States and must provide evidence from the Immigration and Naturalization Service of that status;

(3) In the United States for other than a temporary purpose and must provide evidence from the Immigration and Naturalization Service of intent to become a citizen or permanent resident;

(4) A permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; or

(5) A citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

(e) *Effect of default on eligibility.* (1) Except as provided in paragraph (e)(2) of this section, a person is ineligible to be a borrower under the GSLP or PLUS Program if that person, or the student for whom a parent is borrowing, is in default on any loan made under any title IV student financial assistance program identified in 34 CFR Part 668. For loans made under the National Direct Student Loan Program, the term "default" is defined in 34 CFR Part 674.

(2) If a borrower, or student for whom a parent is borrowing, is in default, as set forth in paragraph (e)(1) of this section, the borrower may receive a GSLP or PLUS Program loan only if the person who is in default

has made satisfactory arrangements with the holder of the loan to repay the defaulted loan.

(3) The school may rely on the borrower's or student's written statement that he or she is not in default, unless the school has information to the contrary.

(4) The Secretary does not consider either a loan that is discharged in bankruptcy or a defaulted loan that is paid-in-full after default to be in default for purposes of this section.

(f) *Effect of overpayment of a grant on eligibility.* (1) Except as provided in paragraph (f)(2) of this section, a person is ineligible to be a borrower under the GSLP or PLUS Program if that person, or the student for whom a parent is borrowing, is liable for an overpayment on any grant made under any Title IV student assistance program identified in 34 CFR Part 668.

(2) If the borrower, or the student for whom a parent is borrowing, is liable for an overpayment on a grant, as set forth in paragraph (f)(1) of this section, the borrower may receive a GSLP or PLUS Program loan only if the person who is liable for the overpayment meets the following conditions:

(i) *Overpayment of a Pell Grant.* If the borrower, or the student for whom a parent is borrowing, has been overpaid on a Pell Grant, the borrower may still be eligible under the GSLP or PLUS Program if—

(A) The borrower, or the student for whom a parent is borrowing, is otherwise eligible; and

(B) The overpayment can be eliminated in the award year (as defined in 34 CFR Part 690) in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(ii) *Overpayment of a Pell Grant due to a school error.* If the borrower, or the student for whom a parent is borrowing, has been overpaid as a result of a school error, and the overpayment cannot be eliminated by adjusting subsequent Pell Grant payments in the award year, the borrower may still be eligible under the GSLP or PLUS Program if—

(A) The borrower, or the student for whom a parent is borrowing, is otherwise eligible; and

(B) The person who received the overpayment acknowledges in writing the amount of the Pell Grant overpayment and agrees to repay it within six months from the date of the acknowledgment.

(iii) *Overpayment on a Supplemental Educational Opportunity Grant.* If the borrower, or the student for whom a parent is borrowing, is overpaid on a Supplemental Educational Opportunity Grant, the borrower may still be eligible under the GSLP or PLUS Program if—

(A) The borrower, or the student for whom a parent is borrowing, is otherwise eligible; and

(B) An adjustment in subsequent financial aid payments (other than Pell Grants) eliminates the overpayment in the same award year (as defined in 34 CFR Part 676) in which it occurred.

(g) *Additional eligibility requirements for a student attending flight school.* To be eligible as a student or a borrower under the GSLP or the PLUS Program for enrollment in a flight school program at a vocational school or an institution of higher education, a student must—

(1) Plan to pursue or be pursuing a full-time program leading to commercial flight ratings;

(2) Have completed ground school training or be taking it concurrently with flight training;

(3) Hold a private pilot's certificate or have sufficient flight hours to qualify for that certificate; and

(4) Hold at least a Class II medical certificate.

(Authority: 20 U.S.C. 1077, 1078, 1082, 1085, 1091)

§ 682.202 Permissible charges by lenders to borrowers.

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) *Interest.* (1) Applicable interest rates under the GSLP:

(i) The applicable interest rate on a GSLP loan for a borrower who, on the date the promissory note is signed, does not have an outstanding balance on a previous GSLP loan is—

(A) Seven percent for a loan covering a period of instruction beginning before January 1, 1981;

(B) Nine percent for a loan covering a period of instruction beginning on or after January 1, 1981, but before September 13, 1983; or

(C) Eight percent for a loan covering a period of instruction beginning on or after September 13, 1983.

(ii) The applicable interest rate on a GSLP loan for a borrower who, on the date the promissory note evidencing the loan is signed, has an outstanding balance on a previous GSLP loan, is the applicable interest rate on the previous loan.

(2) Applicable interest rates under the PLUS Program: (i) The applicable interest rate on a PLUS Program loan is—

(A) Nine percent for a loan made on or after January 1, 1981, but before October 1, 1981;

(B) Fourteen percent for a loan made on or after October 1, 1981, but before November 1, 1982; or

(C) Twelve percent for a loan made on or after November 1, 1982.

(3) Under both the GSLP and the PLUS Program a lender may charge a borrower an actual rate of interest that is less than the applicable interest rate specified in paragraphs (a)(1) or (a)(2) of this section.

(b) *Capitalization.* (1) Under a guarantee agency program, a lender may add accrued interest and unpaid insurance premiums on a loan to the borrower's unpaid principal balance if so authorized by the guarantee agency. This increase in the principal balance of a loan is called "capitalization." A guarantee agency's policy, with respect to capitalization, may not permit capitalization that is not permitted under paragraphs (b)(2) and (b)(3) of this section.

(2) Under the FISLP and the Federal PLUS Program, a lender may capitalize interest that has accrued—

(i) During the in-school period or grace period, if capitalization is expressly authorized by the promissory note;

(ii) During a period of authorized deferment;

(iii) During a period of forbearance, as permitted under § 682.211; or

(iv) During the period from the dat the first installment payment was du until it was made.

(3) A lender may capitalize accrue interest under paragraphs (b)(2)(i through (iii) of this section no mor frequently than once a year, excep that capitalization is again permitte when repayment is required to begi or resume. A lender may capitalize accrued interest under paragraph (b)(2)(iv) of this section only on the date repayment of principal actually begins.

(c) *Origination fee for a GSLP loan.* Under the GSLP a lender—

(1) May charge a borrower an origination fee not to exceed the maximum rate specified by Federal statute.

(2) May deduct the origination fee from the proceeds of the loan;

(3) Shall, in the case of a loan disbursed in multiple installments, deduct a *pro rata* portion of the fee from each disbursement;

(4) Shall refund the portion of the origination fee previously deducted from the loan or multiply-disbursed portion thereof by a credit against the borrower's loan balance if—

(i) The loan check is returned uncashed to the lender;

(ii) The loan is repaid-in-full within 120 days of disbursement;

(iii) The loan check has not been cashed within 120 days of disbursement; or

(iv) The loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(ii)(B) have not been released from the restricted account maintained by the school within 120 days of disbursement.

(d) *Insurance premium.* The insurance premium is a charge made by the guarantee agency or the Secretary to the lender, incident to the guarantee the lender receives against default by the borrower. If the insurance premium is provided for in a borrower's promissory note, a lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor.

(e) *Late charges.* (1) If authorized by the borrower's promissory note, the lender may require the borrower to pay a late charge under the circumstances described in paragraph (e)(2) of this section. This charge may not exceed six cents for each dollar of each late installment.

(2) The lender may require the borrower to pay a late charge if the borrower—

(i) Fails to pay all or a portion of a required installment payment within 10 days after it is due; and

(ii) Fails to provide written evidence that verifies the borrower's eligibility for an authorized deferment of the payment.

(f) *Collection charges.* (1) If provided for in the borrower's promissory note, the lender may require that the borrower pay costs incurred by the lender or its agent in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs;

(iii) Telegrams; and

(iv) Long distance telephone calls.

(2) The costs referred to in paragraph (f)(1) of this section may not include normal collection costs associated with preparing letters or notices or with making personal contacts with the borrower (*e.g.,* local telephone calls).

(Authority: 20 U.S.C. 1077, 1078, 1079, 1082, 1087-1)

§ 682.203 Statement of Educational Purpose.

No loan may be made under this part until the borrower submits to the lender a written Statement of Educational Purpose, on a form approved by the Secretary, certifying that the loan proceeds will be used solely for costs of attendance at the school that the borrower, or the student on whose behalf a parent is borrowing, is or will be attending.

(Authority: 20 U.S.C. 1082, 1091)

§ 682.204 Maximum loan amounts.

(a) *GSLP annual limits.* The total amount a student may borrow in any academic year of study under the GSLP, including the FISLP, may not exceed—

(1) $2,500 in the case of an undergraduate student, including any amounts borrowed under the PLUS Program in the case of an independent undergraduate student, but not more than the lesser of $2,500 or half the estimated cost of attendance, for a loan made by a State lender or made or originated by a school to a student who—

(i) Is enrolled in the first academic year of undergraduate study; and

(ii) Was not previously enrolled in an undergraduate program; or

(2) $5,000 in the case of a graduate or professional student.

(b) *GSLP aggregate limits.* The aggregate guaranteed unpaid principal amount of all GSLP loans made to a student may not exceed—

(1) $12,500, in the case of an undergraduate student, including any amounts borrowed under the PLUS Program in the case of an independent undergraduate student; or

(2) $25,000, in the case of any graduate or professional student, including loans for undergraduate study.

(c) *PLUS Program annual limits.* The total principal amount of all PLUS Program loans made to, or for the benefit of, an eligible student for any academic year of study may not exceed—

(1) $2,500, including any amounts borrowed by the student under the GSLP, in the case of an independent undergraduate student;

(2) $3,000, in the case of a graduate or professional student; or

(3) $3,000, in the case of a parent borrower.

(d) *PLUS Program aggregate limits.* The aggregate guaranteed unpaid principal amount of all PLUS Program loans made to or for the benefit of an eligible student may not exceed—

(1) $12,500, including any amounts borrowed by the student under the GSLP, in the case of an independent undergraduate student;

(2) $15,000, in the case of a graduate or professional student; or

(3) $15,000, in the case of a parent borrower.

(Authority: 20 U.S.C. 1075, 1078, 1078-1, 1078-2, 1079, 1082, 1089)

§ 682.205 Disclosure requirements.

(a) A lender shall disclose the following information to a borrower either before or at the time of the first disbursement on the loan:

(1) The lender's name, and the address to which correspondence with the lender and payments should be sent;

(2) The principal amount of the loan;

(3) The amount of any charges, including the origination fee and the insurance premium, collected by the lender at the time of or before disbursement of the loan, and an indication of whether those charges are deducted from the proceeds of the loan or paid separately by the borrower;

(4) The actual interest rate;

(5) The annual and aggregate maximum amounts that may be borrowed;

(6) A statement that information concerning the loan, including the date of disbursement and the amount of the loan, will be reported to a credit bureau or a credit reporting agency;

(7) An explanation of when repayment of the loan is required and when the borrower is required to pay the interest that accrues on the loan;

(8) The minimum and maximum number of years in which the loan must be repaid and the minimum amount of required annual payments;

(9) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(10) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

(11) A statement describing the circumstances under which repayment of the loan or interest that accrues on the loan may be deferred;

(12) A statement of availability of the Department of Defense program for repayment of loans on the basis of military service, as provided for in 10 U.S.C. 2141, note;

(13) The definition of "default" found in § 682.200, and the consequences to the borrower of a default, including a statement concerning likely litigation and a statement that the default will be reported to a credit bureau or a credit reporting agency;

(14) An explanation of the possible effects of accepting the loan on the eligibility of the student for other forms of student financial assistance;

(15) An explanation of any costs the borrower may incur in the making or collection of the loan; and

(16) In the case of a GSLP or student PLUS loan, a statement that the loan proceeds will be transmitted to the school for delivery to the borrower.

(b) The lender shall also disclose the information listed in this paragraph in a written statement provided to the borrower at or prior to the beginning of the repayment period. The lender shall make the disclosures during the grace period, in the case of a FISLP loan. Should the borrower enter the repayment period without the lender's knowledge, the lender shall provide the required disclosures to the borrower immediately upon discovering that the borrower has entered the repayment period. The lender shall disclose—

(1) The lender's name, and the address to which correspondence with the lender and payments should be sent;

(2) The scheduled date upon which the repayment period is to begin;

(3) The estimated balance, including the estimated amount of interest to be capitalized, owed by the borrower as of the date upon which the repayment period is to begin, or the date of the disclosure, whichever is later;

(4) The actual interest rate on the loan;

(5) An explanation of any fees which may accrue or be charged to the borrower during the repayment period;

(6) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments;

(7) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(8) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule; and

(9) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty.

(c) The lender shall provide the information required to be disclosed by paragraphs (a) and (b) of this section at no cost to the borrower.

(Approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078-2, 1082, 1083a)

§ 682.206 Due diligence in making a loan.

(a) *General.* (1) The loan-making process includes processing the loan application and other required forms, approving the borrower for a loan, determining the loan amount, explaining to the borrower his or her responsibilities under the loan, completing and having the borrower sign the promissory note, and disbursing the loan proceeds.

(2) Except as may be authorized by the Secretary, a lender may not delegate its loan-making functions to a school unless the school has an origination relationship with the lender. If that relationship exists, the lender may rely in good faith upon statements of the borrower contained in the loan application, but may not rely upon statements made by the school in the application. A non-school lender that does not have an origination relationship with a school may rely in good faith upon statements of both the borrower and the school that are contained in the application. Except as provided in Part 668, Subpart E, a school lender may rely in good faith upon statements made by the borrower in the loan application.

(b) *Processing forms.* Before disbursing a loan, a lender must determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender may not ask the borrower to sign any form before all information requested from the borrower on that form has been supplied.

(c) *Approval of borrower and determination of loan amount.* (1) A lender may make a loan only to an eligible borrower. To the extent authorized by paragraph (a)(2) of this section, the lender may determine the borrower's eligibility based on the information provided on the application by the school, the borrower, and, if the borrower is a parent, the student on whose behalf the loan is sought.

(2) In determining the amount of the loan to be made, within the limitations of § 682.204, the lender shall review the data on the student's cost of attendance and estimated financial assistance that is provided on the application form. In no case may the loan amount exceed the student's estimated cost of attendance, less estimated financial assistance, for the academic period for which the loan is intended.

(d) *Promissory note.* (1) The lender shall obtain from the borrower an executed legally-enforceable promissory note for each loan as proof of the borrower's indebtedness.

(2) A lender may not add any clauses to, or modify any provisions of, the most current promissory note provided by the guarantor without the guarantor's prior approval.

(3) The lender shall give the borrower a copy of each executed note.

(e) *Security, endorsement, and co-makers.* (1) A FISLP or Federal PLUS Program loan shall be made without security or endorsement.

(2) A Federal PLUS Program loan may be made to two eligible parents who agree to be jointly liable for repayment of the loan as co-makers.

(f) *Loan disbursement.* A lender shall disburse funds as required by § 682.207.

(Authority: 20 U.S.C. 1077, 1078-2, 1079, 1080, 1082, 1083, 1085)

§ 682.207 Due diligence in disbursing a loan.

(a) (1) This section prescribes procedures for lenders to follow in disbursing GSLP and PLUS Program loans. With respect to FISLP and Federal PLUS Program loans, references to the "guarantee agency" in this section mean the "Secretary."

(2) The requirements of paragraphs (b)(1) (ii) and (iv) of this section must be satisfied either by the lender or by an escrow agent with which the lender has an agreement pursuant to § 682.408. The lender must comply with paragraph (b)(1)(iii) of this section whether or not it disburses to an escrow agent.

(b)(1) In disbursing a loan, a lender—

(i) May not disburse a loan prior to the issuance of the guarantee commitment for the loan by the guarantee agency, except with the agency's prior approval;

(ii) Shall disburse loan proceeds by—

(A) A check that is made payable to the borrower, or, if required by the guarantor, is made co-payable to the borrower and the school identified on the loan application, and requires the personal endorsement or other written approval of the borrower in order to be cashed; or

(B) If authorized by the guarantor, electronic funds transfer to an account of the student's school that requires the written approval of the borrower for the release of funds from the account; and

(iii) Shall not disburse loan proceeds earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made, and in no case, without the Secretary's prior approval, earlier than 30 days prior to the date on which the student is scheduled to enroll; and

(iv) Shall disburse—

(A) Directly to the school, in the case of a student borrower; or

(B) Directly to the borrower, in the case of a parent borrowing on behalf of an eligible student, and shall notify the school of the amount of the loan within 30 days of the date on which the first disbursement on the loan is made.

(2) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse or otherwise approve the cashing of a loan check or approve the release of funds disbursed by electronic funds transfer, nor may a borrower provide this power of attorney or authorization to anyone else.

(c) (1) Multiple disbursement requirements: A lender shall disburse GSLP and PLUS Program loans made to student borrowers in multiple installments if—

(i) The amount of the loan is $1,000 or more; and

(ii) On the date of the first disbursement, the time remaining in the period of enrollment for which the loan is made is greater than six months, one semester, two quarters, or 600 clock hours.

(2) Multiple disbursement procedures: In multiply disbursing a loan, a lender shall disburse as follows:

(i) Disbursement must be in two or more installments.

(ii) No installment may exceed one-half of the loan.

(iii) At least one-third of the period of enrollment for which the loan is made must elapse before the second installment is disbursed.

(3) For purposes of this paragraph, a lender shall consider all loans made for the same period of enrollment as a single loan.

(d) (1) Under certain circumstances, a lender, with the prior approval of the guarantee agency, may disburse after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the guarantee commitment.

(2) A guarantee agency may approve a lender's request to disburse under these circumstances only if the loan proceeds will be used for the student's cost of attendance for the period of enrollment for which the loan was intended and during which the student was actually enrolled on at least a half-time basis.

(3) If the lender, after receiving the guarantee agency's prior approval, makes a late disbursement, the lender shall give notice of that approval to the school at the time the lender sends the loan proceeds to the school.

(Authority: 20 U.S.C. 1077, 1078, 1078-2, 1079, 1080, 1082, 1083, 1085)

§ 682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to credit bureau organizations, responding to borrower inquiries, and establishing the terms of repayment.

(b) For any GSLP or PLUS Program loan, a lender shall promptly report to at least one credit bureau—

(1) The date of disbursement and the amount of the loan;

(2) Information concerning the collection of the loan, including the repayment status of the loan; and

(3) The date the loan is fully repaid by, or on behalf of, the borrower or discharged by reason of the borrower's

death, bankruptcy, or total and permanent disability.

(c) (1) A lender shall respond on a timely basis to written inquiries and other communications from a borrower and any endorser on a loan.

(2) When a lender learns that a GSLP borrower is no longer enrolled at a participating school on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(d)(1) A lender shall follow the procedures in § 682.412 whenever it learns that the borrower, or, if applicable, the student on whose behalf a parent has borrowed—

(i) Did not qualify for all or a portion of a loan made under this part; or

(ii) Has received a GSLP loan subject to payment of Federal interest benefits as provided under § 682.301, but is in fact ineligible for some or all of those interest benefits.

(2) For purposes of § 682.412(f), the term "guarantee agency" means the Secretary in the case of a FISLP or Federal PLUS Program loan.

(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1077, 1078, 1078-2, 1079, 1080, 1082, 1085)

§ 682.209 Repayment of loans.

(a) *Conversion of a loan to repayment status.* (1) For a PLUS Program loan, the repayment period begins on the day the loan is disbursed. The first payment is due within 60 days after the date of disbursement.

(2) Except as provided in paragraphs (a) (3) and (4) of this section, for a GSLP loan the repayment period begins—

(i) For a borrower with a loan for which the applicable interest rate is seven percent per year, not less than nine nor more than twelve consecutive months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school. The length of this grace period is determined by the lender for loans made under the FISLP, and by the guarantee agency for loans guaranteed by the agency; and

(ii) For a borrower with a loan for which the applicable interest rate is eight or nine percent per year, six consecutive months following the month in which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(3) For a borrower of a GSLP loan who is a correspondence student, the grace period specified in paragraph (a)(2) of this section begins on the earliest of the date—

(i) The borrower completes the program;

(ii) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in § 682.602. However, the school may permit one restoration to in-school status for a student who falls 60 days behind the due date for submission of a particular assignment if the student states in writing, within the 60-day period, an intention to continue in the program and an understanding that the required lessons must be submitted on time; or

(iii) That is 60 days following the latest allowable date established by the school for completing the program in the schedule required under § 682.602.

(4) For a GSLP loan, the repayment period begins prior to the end of the grace period, if the borrower requests and is granted a repayment schedule that so provides. In this event, a borrower may not further utilize the grace period.

(5) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period. If a graduated repayment schedule is established, it may not provide for any single installment that is more than three times greater than any other installment.

(6) (i) Subject to paragraphs (a)(6) (ii) through (iv) of this section, a lender shall allow a borrower at least five years, but not more than ten years, to repay a loan, calculated from the beginning of the repayment period. Except in the case of a FISLP loan made for a period of enrollment beginning on or after July 1, 1986, the lender shall require a borrower to

fully repay a GSLP loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in § 682.210 or § 682.211, respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, 10- and 15-year periods.

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than five years, the borrower is not entitled to the full 5-year period.

(iv) Prior to the beginning of the repayment period the borrower may request and be granted by the lender a repayment period of less than five years. At any time, subject to paragraph (a)(6)(iii) of this section, and without the lender's consent, the borrower may subsequently have the total repayment period extended to a minimum of five years.

(b) *Prepayment.* The borrower may prepay the whole or any part of a loan at any time without penalty. Unless the borrower requests that the lender credit the prepayment to future installments, the lender shall credit the entire prepayment to unpaid principal.

(c) *Minimum annual payment.* (1)(i) Subject to paragraphs (c)(1) (ii) and (iii) of this section, during each year of the repayment period a borrower's total payments to all holders of the borrower's GSLP or PLUS Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the lender agree, the amount paid may be less.

(iii) If the borrower and the borrower's spouse have one or more GSLP or PLUS Program loans, their combined annual payment must meet the requirement of paragraph (c)(1)(i) of this section.

(2) The provisions of paragraphs (c)(1)(i) and (ii) of this section may not result in an extension of the 10- or 15-year maximum repayment periods unless forbearance, as described in § 682.211, has been approved.

(d) *Supplemental repayment schedule.* (1) In the case of a loan made by a school lender, the lender and the borrower may agree on a supplemental re-
payment schedule, with the prior
proval of the Secretary, that wo
supplement the regular repaym
schedule described in paragraph (a
of this section.

(2) The supplemental repaym
schedule may be based on other th
equal or graduated payments. For
ample, the supplemental repaym
schedule may base the amount of
borrower's payment on the borrowe
income.

(3) The borrower may not ins
upon the establishment of a supp
mental repayment schedule. T
lender may not insist upon the est
lishment of a supplemental repayme
schedule unless the lender obtain
the borrower's written consent
enter into one at the time the loan w
made.

(e) *Treatment by lenders of borro*
er's refunds received from schools. (
A lender shall treat a payment of
borrower's refund received by th
lender from a school as a cred
against the amount owed by the bo
rower on the borrower's loan.

(2) (i) If a lender receives a refun
payment from a school on a loan th
is no longer held by that lender, th
lender shall promptly transmit th
amount of the refund payment to th
holder to whom it assigned the loa
with an explanation of the source o
the payment.

(ii) Upon receipt of a refund trans
mitted under paragraph (e)(2)(i) o
this section, the holder of the loa
shall promptly provide written notic
to the borrower that the holder ha
received the refund.

(Authority: 20 U.S.C. 1077, 1078, 1078-2
1079, 1082, 1085)

§ 682.210 Deferment.

(a) *Borrower eligibility.* (1) Except in the case of a loan received by a parent borrower under the PLUS Program on or after August 15, 1983, a borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period.

(2) For a loan made before October 1, 1981, the borrower is also entitled to have periodic installment payments of

principal deferred during the six-month period (post-deferment grace period) that commences after the completion of each deferment period or combination of those periods.

(3) Interest accrues and is paid by the borrower during the deferment period, and the post-deferment grace period, if applicable, unless, in the case of a GSLP loan, the loan was determined to be eligible for interest benefits under § 682.301 when the loan was made.

(4) In order to receive a deferment, the borrower must request the deferment and provide the lender with all documentation required to establish eligibility for a specific type of deferment.

(5) An authorized deferment period begins on the date the condition entitling the borrower to a deferment first exists, but not more than—

(i) Sixty days before the date the lender receives the request and documentation required under paragraph (a)(4) of this section for an unemployment deferment; and

(ii) Six months before the date the lender receives the request and documentation required under paragraph (a)(4) of this section for all other deferments.

(6) An authorized deferment period ends on the earlier of—

(i) The date the condition establishing the borrower's eligibility for the deferment ends; or

(ii) The date when the condition entitling the borrower to a deferment has continued to exist for the maximum amount of the time allowed for a specific deferment.

(7) A lender may not deny a deferment to which the borrower is entitled, even though the borrower may be delinquent, but not in default, in making required installment payments. The 180- or 240-day period required to establish a default does not run during the deferment and post-deferment grace periods. When the deferment and, if applicable, post-deferment grace period expires, a borrower resumes any delinquent status that existed when the deferment period began.

(8) A borrower whose loan is in default is not eligible for a deferment as to that loan, unless the borrower has made satisfactory repayment arrangements with the holder of the loan.

(9) The borrower must inform the lender when the condition entitling the borrower to a deferment no longer exists.

(b) *Authorized deferments.* Deferment is authorized during periods when a borrower is engaged in—

(1) (i) Full-time study at a participating school, unless the borrower is not a national of the United States and is pursuing a course of study at a foreign school; or

(ii) Full-time study at a school which meets the definition of an institution of higher education or a vocational school and is operated by an agency of the Federal Government (*e.g.*, the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a foreign school;

(2) Study under an eligible graduate fellowship program, as described in paragraph (c) of this section;

(3) Up to three years of active duty status in the United States Armed Forces or service as an officer in the Commissioned Corps of the United States Public Health Service;

(4) Up to three years of service under the Peace Corps Act (if the borrower has agreed to serve for a term of at least one year);

(5) Up to three years of service as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (ACTION programs) (if the borrower has agreed to serve for a term of at least one year);

(6) Up to three years of full-time volunteer service, which the Secretary has determined is comparable to service referred to in paragraphs (b)(4) and (b)(5) of this section, for a tax-exempt organization, as described in paragraph (d) of this section;

(7) Conscientiously seeking, but unable to find, full-time employment in the United States over a single period of up to 12 months, as described in paragraph (e) of this section;

(8) Pursuing a rehabilitation training program for disabled individuals, as described in paragraph (f) of this section;

(9) Up to two years of service as an intern, as described in paragraph (g) of this section; or

(10) Up to three years during which the borrower is temporarily totally disabled, as described in paragraph (h) of this section, or during which the borrower is unable to secure employment because the borrower is caring for a spouse who is temporarily totally disabled, as described in paragraph (i) of this section.

(c) *Graduate fellowship deferment.* To qualify for a deferment for study in a graduate fellowship program, a borrower must provide the lender with a statement from an official of the borrower's fellowship program certifying that—

(1) The fellowship program—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support; and

(iii) Requires a graduate fellow to submit periodic reports, projects, or other evidence of the fellow's progress; and

(2) The borrower—

(i) Holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) Is engaged in full-time study, which may be independent of an educational or cultural institution, in an academic or professional subject area for which the borrower has shown an interest and ability; and

(iii) Has been recommended by an institution of higher education for acceptance into the graduate fellowship program.

(d) *Full-time volunteer service for a tax-exempt organization deferment.* To qualify for a deferment for full-time volunteer service, for a tax-exempt organization, comparable to volunteer service in the Peace Corps or full-time volunteer service in a program administered by the ACTION agency, a borrower must provide the lender with a statement from an official of the borrower's volunteer program certifying that—

(1) The borrower serves in an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954;

(2) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(3) The borrower's compensation (including a subsistence allowance) does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency;

(4) The borrower, as part of his or her duties, does not give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities; and

(5) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(e) *Unemployment deferment.* (1) To qualify for an unemployment deferment, a borrower must provide the lender with a written request for the deferment. To continue the deferment for more than three months, the borrower must provide an additional request before the end of each three-month period. Each request must be signed by the borrower and dated, and must contain—

(i) A statement from the borrower describing the borrower's conscientious search for full-time employment, including for at least three attempts to secure employment during that three-month period—

(A) The name of the firm contacted;

(B) The name of the person contacted; and

(C) The firm's address and phone number.

(ii) The borrower's latest permanent home address and, if applicable, the borrower's latest temporary address;

(iii) Certification from the borrower that the borrower has registered with a public or private employment agency, if one is accessible, specifying its name and address and the date of registration therewith; and

(iv) The borrower's agreement to notify the lender promptly when full-time employment is obtained.

(2) A borrower may qualify for an unemployment deferment whether or

not the borrower has been previously employed.

(3) For purposes of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(4) An unemployment deferment is not justified if the borrower refuses to seek employment in kinds of positions or at salary and responsibility levels for which the borrower feels overly qualified by virtue of education or previous experience.

(f) *Rehabilitation training program deferment.* To qualify for a rehabilitation training deferment, the borrower must be receiving, or be scheduled to receive, services under a program designed to rehabilitate disabled individuals, and must provide the lender with the following documentation:

(1) A certification from the rehabilitation agency that the borrower is either receiving or scheduled to receive rehabilitation training services from the agency.

(2) A certification from the rehabilitation agency that the rehabilitation program—

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Veterans Administration; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purposes of this paragraph, full-time employment involves at least 30 hours of work per week.

(g) *Internship deferment.* (1) An eligible internship program is a supervised training program that—

(i) Is required in order for the borrower to begin professional practice or service, *e.g.*, medical residency;

(ii) Requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(iii) A State licensing agency requires completion of before certifying the individual for professional practice or service.

(2) To qualify for an internship deferment, the borrower must provide to the lender the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (g)(2) of this section.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(h) *Temporary total disability deferment.* (1) To qualify for a temporary total disability deferment, a borrower must give the lender a certification, from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, that the borrower is temporarily totally disabled.

(2) For purposes of this section, a borrower who is "temporarily totally disabled" is one who, by reason of injury or illness, has become unable to attend school or to work and earn money during a period of at least 60 days needed to recover from the injury or illness.

(3) A borrower is not considered temporarily totally disabled on the basis

of a condition that existed before he or she applied for the loan, unless the borrower's condition has substantially deteriorated since he or she submitted the loan application so as to render the borrower temporarily totally disabled.

(l) *Spouse's temporary total disability deferment.* (1) To qualify for a deferment given to a borrower whose spouse is temporarily totally disabled, a borrower must give the lender—

(i) A certification from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, that the borrower's spouse is temporarily totally disabled; and

(ii) A certification from the borrower that the borrower is unable to secure employment because the borrower is providing nursing or similar services to the borrower's spouse that the spouse requires due to the injury or illness.

(2) For the purposes of this section, a spouse who is "temporarily totally disabled" is one who, by reason of injury or illness, has become unable to work and earn money during a period of at least 60 days needed to recover from the injury or illness, and who, during that special period, requires nursing or similar services.

(Approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1077, 1078, 1078-2, 1082, 1085)

§ 682.211 Forbearance.

(a) (1) The Secretary encourages a lender to grant forbearance for the benefit of a borrower in order to prevent the borrower from defaulting on the borrower's repayment obligation. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or accepting smaller payments than were previously scheduled.

(2) A lender may grant forbearance of payments of principal and interest under paragraph (b) of this section whenever—

(i) Poor health or other personal problems affect the ability of the borrower to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 682.210 and the Secretary does not pay interest benefits on behalf of the borrower under § 682.301.

(3) If two borrowers are liable for repayment of a PLUS Program loan as co-makers, the lender may grant forbearance only when the ability of both borrowers to make scheduled payments has been impaired.

(4) If payments of interest are forborne, they may be capitalized as provided in § 682.202(b).

(b) A lender may grant forbearance on terms that are consistent with the minimum annual payment requirement and the 10- and 15-year maximum repayment periods if the lender and borrower agree in writing to the new terms, or, in the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time on terms that are inconsistent with the minimum annual repayment and the 10- and 15-year maximum repayment periods if—

(1) The lender reasonably believes that the borrower intends to repay the loan but is currently unable to make payments in accordance with the terms of the loan note, and the lender states the basis for its belief in writing and maintains that statement in its loan file on that borrower;

(2) Both the borrower and an authorized official of the lender agree in writing to the forbearance; and

(3) Where the forbearance involves the postponement of all payments, the lender contacts the borrower at least once every three months during the period of forbearance in order to remind the borrower of the outstanding obligation to repay.

(d) The lender shall maintain evidence in the borrower's loan file that the forbearance has been agreed to by both the lender and the borrower.

(Reporting and recordkeeping requirements contained in paragraph (d) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078, 1078-2, 1080, 1082)

§ 682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(1) Secure funds for making loans; or

(2) Induce a lender to make loans to either the students or the parents of students of a particular school or a particular category of students or their parents.

(b) The following are examples of transactions which, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

(1) Cash payments by or on behalf of a school made to a lender or other party.

(2) The maintaining of a compensating balance by or on behalf of a school with a lender.

(3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(5) Purchase by or on behalf of a school of stock of the lender.

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by the Student Loan Marketing Association, an agency of any State functioning as a secondary market, or in other circumstances approved by the Secretary, notes, or any interest in notes, shall not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or a lender, with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with the lender, may not pledge a loan made under the GSLP or PLUS Program as security for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the then most recently-prescribed special allowance under § 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school or lender which would be a party to the proscribed transactions.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the seller of those loans a warranty that—

(1) Covers future reductions by the Secretary or a guarantee agency in computing the amount of loss payable on default claims filed on the loans, where the reductions are attributable to an act or failure to act on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a loan guaranteed under the GSLP or PLUS Program shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

(Authority: 20 U.S.C. 1082, 1097)

§ 682.213 Prohibition against the use of the Rule of 78's.

For purposes of the calculations required by this part, a lender shall not use the Rule of 78's to calculate the outstanding principal balance of a loan.

(Authority: 20 U.S.C. 1082)

Subpart C—Federal Payments of Interest and Special Allowance

SOURCE: 51 FR 40899, Nov. 10, 1986, unless otherwise noted.

§ 682.300 Payment of interest benefits on a GSLP loan.

(a) *General.* The Secretary pays a lender a portion of the interest on a GSLP loan on behalf of a borrower who qualifies under § 682.301. This payment is known as interest benefits.

(b) *Covered interest.* (1) The Secretary pays interest benefits on an eligible GSLP loan for interest accruing—

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraph (b)(2) of this section;

(ii) During any period when the borrower has an authorized deferment, and, if applicable, a post-deferment grace period; and

(iii) During the repayment period for loans described in paragraph (d)(2) of this section.

(2) The Secretary's obligation to pay interest benefits on an otherwise eligible loan terminates on the earlier of—

(i) The date the borrower's loan is repaid;

(ii) The date the loan check is returned uncashed to the lender;

(iii) The 120th day after the date of disbursement, if the loan check has not been cashed on or before that date, or if the loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date;

(iv) The date of default by the borrower;

(v) The date the borrower's loan is discharged by a bankruptcy court;

(vi) The date the lender determines that the borrower has died or has become totally and permanently disabled; or

(vii) The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, regardless of whether the lender has filed a claim for loss on the loan with the guarantor.

(3) Section 682.413(a) sets forth the circumstances under which a lender may be required to repay interest benefits received on a loan guaranteed by a guarantee agency.

(c) *Interest not covered.* Interest benefits do not cover—

(1) Interest on interest added to principal, except for interest capitalized in accordance with § 682.202(b);

(2) Interest for which the borrower is not otherwise liable; or

(3) Interest paid on behalf of the borrower by a guarantee agency.

(d) *Rate.* (1) Except as provided in paragraph (d)(2) of this section, the Secretary pays the lender the actual interest rate on the outstanding principal balance of an eligible GSLP loan, provided that the actual interest rate does not exceed the applicable interest rate.

(2) For a loan disbursed prior to December 15, 1968, or subject to a binding commitment made prior to that date, the Secretary pays an amount during the repayment period equivalent to three percent per year of the unpaid principal amount of the loan.

(Authority: 20 U.S.C. 1078, 1082)

§ 682.301 Eligibility of borrowers for interest benefits on GSLP loans.

(a) *General.* (1) If a student's adjusted gross family income is $30,000 or less, the student qualifies for interest benefits for the amount of his or her GSLP loan.

(2) If the student's adjusted gross family income is more than $30,000, the student qualifies for interest benefits if the institution he or she attends or is planning to attend determines that the student demonstrates financial need for the loan.

(i) If the student demonstrates financial need for a loan of less than $500, or of more than $1,000, the student qualifies for interest benefits for the loan amount for which the student has demonstrated financial need.

(ii) If the student demonstrates financial need for a loan between $500 and $1000, the student qualifies for interest benefits on a loan of up to $1,000.

(b) *Application for interest benefits.* To apply for interest benefits, the student shall submit to the lender his or her loan application. The application must include a certification from the student's institution of the following information:

(1) The estimated cost of attendance for the student for the academic period for which the loan is intended.

(2) The estimated financial assistance for the student for the academic period for which the loan is intended.

(3) The adjusted gross family income of the student's family.

(4) The student's expected family contribution if his or her adjusted gross family income exceeds $30,000.

(5) The amount of the student's need for a loan as determined by the institution pursuant to paragraph (e) of this section.

(c) *Adjusted gross family income.* (1) The institution shall determine the adjusted gross family income of the student's family based upon data provided, and certified to, by each person whose income is required to be considered.

(2) As used in this section, "adjusted gross family income of the student's family" means "adjusted gross income," as defined in section 62 of the Internal Revenue Code, as reported on the 1985 Federal income tax return(s) of—

(i) The student;

(ii) The student's spouse, if any; and

(iii) The student's mother and father, unless the school determines that, at the time the student applies for the loan, the student is an "independent student."

(3) A dependent student whose parents are divorced or separated shall comply with the following procedures for reporting a parent's adjusted gross income to determine the adjusted gross family income:

(i) Include only the income of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of application.

(ii) If paragraph (c)(3)(i) of this section does not apply, include only the income of the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application.

(iii) If neither paragraph (c)(3)(i) nor (c)(3)(ii) of this section applies, include only the income of the parent who provided the greater support for the period commencing January 1, 1985, and ending 12 months prior to the date of application.

(4) If one of the parents has died, a dependent student shall include only the income of the surviving parent. If both parents have died, the student shall not report any parental income for those parents even if the parent(s) had income.

(5) The following rule applies if either a parent whose income is taken into account under paragraph (c)(3) of this section, or a parent who is a widow or widower and whose income is taken into account under paragraph (c)(4) of this section, has remarried. The income of that parent's spouse is included in determining the adjusted gross family income if, in 1985 or 1986, the dependent student—

(i) Has received or will receive financial assistance of more than $750 from that spouse; or

(ii) Has lived or will live for more than six weeks in the home of the parent and that spouse.

(6) The income of the student's spouse is not included in determining the adjusted gross family income for a student who is divorced or separated, or whose spouse has died.

(d) *Independent student.* As used in this section, "independent student" means a student who meets the criteria in 34 CFR 668.1a. All other students are considered to be dependent students.

(e) *Determination of need.* (1) If the student's adjusted gross family income exceeds $30,000, the institution shall determine the student's need for a loan by subtracting from the student's "estimated cost of attendance," as defined in § 682.200, his or her—

(i) "Estimated financial assistance," as defined in § 682.200; and

(ii) Expected family contribution, as determined under paragraph (f) of this section.

(2) The student shall certify the accuracy of any information he or she provides to the institution that is necessary to determine need.

(3) The Secretary may require that family members whose incomes are included in the student's adjusted gross family income under paragraph (c) of this section provide copies of the relevant Federal income tax return(s) and other pertinent documents to support the student's application for interest benefits.

(f) *Determination of expected family contribution.* For a student who seeks a loan for a period of instruction beginning on or after July 1, 1986, but not later than June 30, 1987, the institution shall calculate his or her expected family contribution as follows:

(1) If the student has been awarded financial assistance for award year 1986-87 (July 1, 1986-June 30, 1987) under the National Direct Student Loan (NDSL), College Work-Study (CWS), or Supplemental Educational Opportunity Grant (SEOG) program at the time he or she applies for a Guaranteed Student Loan, the student's expected family contribution is his or her expected family contribution as calculated for the NDSL, CWS or SEOG program.

(2) If the student has not been awarded financial assistance under the campus-based programs for award year 1986-87 at the time he or she applies for a GSLP loan the student's expected family contribution must be determined under either—

(i) A need analysis system approved by the Secretary for the academic year for which the loan is sought for the campus-based programs; or

(ii) The tables found in Appendix B if the adjusted gross income of the student and his or her family, after taking the provisions of paragraph (g) of this section into account, is more than $30,000 and less than $75,000.

(g) In calculating a student's expected family contribution under paragraph (f) of this section—

(1) The institution shall exclude any taxable and nontaxable income realized from the proceeds of a sale of farm or business assets if—

(i) The sale of the farm or business assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy; and

(ii) The institution uses a need analysis system approved by the Secretary for the campus-based programs to calculate the student's expected family contribution; and

(2) The institution shall exclude any taxable income realized from the proceeds of a sale of farm or business assets if—

(i) The sale of the farm or business assets results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy; and

(ii) The institution uses the tables set forth in Appendix B to calculate the student's expected family contribution.

(Approved by the Office of Management and Budget under control number 1840-0110)

(Authority: 20 U.S.C. 1078, 1082, 1089)

[51 FR 40899, Nov. 10, 1986, as amended at 53 FR 49147, Dec. 6, 1988]

§ 682.302 Payments of special allowance on a GSLP or PLUS Program loan.

(a) *General.* The Secretary pays a special allowance to a lender on an eligible GSLP or PLUS Program loan. The special allowance is a percentage of the average unpaid principal balance, including interest capitalized in accordance with § 682.202(b), computed in accordance with paragraph (c) of this section.

(b) *Eligible loans.* All GSLP and PLUS loans otherwise meeting program requirements are eligible for special allowance payments, except for GSLP loans disbursed on or after October 1, 1981 that do not qualify for interest benefits under § 682.301.

(c) *Rate.* (1) Except as provided in paragraphs (c) (2) and (3) of this section, the special allowance rate for an eligible loan during a three-month period is calculated by—

(i) Determining the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the three month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding three and one-half percent to the resulting percentage;

(iv) For a loan made prior to October 1, 1981, rounding the result upward to the nearest one-eighth of one percent; and

(v) Dividing the resulting percentage by four.

(2) In the case of an eligible loan subject to the requirements of section 252 of Pub. L. 99-177, the Balanced Budget and Emergency Deficit Control Act of 1985, the rate specified in paragraph (c)(1)(iii) of this section is reduced to the greater of three percent or the specified rate less four-tenths of one percentage point.

(3)(i) The special allowance rate payable for a three-month period on an eligible loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained from the issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, is one-half the rate determined under paragraph (c) (1) or (2) of this section, but not less than—

(A) Two and one-half percent per year on eligible loans for which the applicable interest rate is seven percent;

(B) One and one-half percent per year on eligible loans for which the applicable interest rate is eight percent; or

(C) One-half of one percent per year on eligible loans for which the applicable interest rate is nine percent.

(ii) The rate established in paragraph (c)(3)(i) of this section also applies to a loan made or purchased with funds obtained from—

(A) Collections or default reimbursements on, or interest or other income pertaining to, a loan described in paragraph (c)(3)(i) of this section; or

(B) The investment of the funds described in paragraph (c)(3)(ii)(A) of this section.

(d) *Termination of special allowance payments on a loan.* (1) The Secretary's obligation to pay special allowance on a loan terminates on the earliest of the date—

(i) The borrower's loan is repaid or the borrower's loan check is returned uncashed to the lender;

(ii) The lender receives payment on a claim for loss on the loan;

(iii) The loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(iv) Ninety days after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor prior to that 90th day; or

(v) One hundred twenty days after the date of disbursement, if the loan check has not been cashed on or before that date, or if the loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date.

(2) Section 682.413(a) sets forth the circumstances under which a lender may be required to repay special allowance received on a loan guaranteed by a guarantee agency.

(e) (1) Except as otherwise provided in Subpart H of this part, the Secretary pays a special allowance on a loan made or acquired with the proceeds of an obligation the interest income from which is exempt from taxation under the Internal Revenue Code only if the Secretary has approved—

(i) The Plan for Doing Business of the Authority which issued the obligation, if the obligation was issued after December 31, 1980; and

(ii) The justification of need for the obligation, if the obligation was issued after August 14, 1983.

(2) As used in this paragraph, proceeds of a tax-exempt obligation include collections, reimbursements from guarantors, interest received, and receipts from the sale of loans financed with the original proceeds of that obligation.

(3) The Secretary pays a special allowance to an Authority at the rate prescribed in paragraph (c)(1) or (c)(2) of this section on a loan made or acquired with the proceeds of a tax-exempt obligation after the loan is pledged or otherwise transferred in consideration of funds derived from sources other than a tax-exempt obligation and—

(i) The prior tax-exempt obligation is retired; or

(ii) The prior tax-exempt obligation is defeased by means of obligations which the Authority certifies in writing to the Secretary bear a yield which does not exceed the yield permitted under 26 CFR 1.103-14 with regard to investments of proceeds of a tax-exempt refunding obligation.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.303 Methods for computing interest benefits and special allowance.

(a) *General.* The Secretary pays a lender interest benefits and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on its loans. A lender shall use the average daily balance method to determine the balance on which the Secretary computes the amount of special allowance payable on its loans.

(b) *Average daily balance method for interest benefits.* (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each actual interest rate for each day of the quarter, and divides the sum by the number of days in the quarter. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The lender computes the interest benefits due on all qualified loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by the actual number of days in the year or 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(c) *Actual accrual method for interest benefits.* (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by the actual number of days in the year or 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(2) The interest benefits due for a quarter is the sum of the daily interest benefits due, computed under paragraph (c)(1) of this section, for each day of the quarter.

(d) *Average daily balance method for special allowance.* (1) To compute the average daily balance outstanding for special allowance purposes, the lender adds the unpaid principal balance outstanding on all qualified loans at each applicable interest rate for each day of the quarter and divides this sum by the number of days in the quarter. The resulting figure is the average daily balance for the quarter.

(2) The Secretary computes the special allowance payable to a lender based upon the average daily balance computed by the lender under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1078, 1082, 1087-1)

§ 682.304 Procedure for payment of interest benefits and special allowance.

(a) *General.* (1) To receive payments of interest benefits and special allowance, a lender must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary.

(2) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by the amount of origination fees the lender was authorized to collect during the quarter under § 682.202(c), whether or not the lender actually collected that amount. The Secretary increases the amount of interest benefits and special allowance payable to the lender by the amount of origination fees refunded to borrowers during the quarter under § 682.202(c).

(3) The lender shall report, on the quarterly report required by paragraph (a)(1) of this section, the amount of origination fees it was authorized to collect, and the amount of those fees refunded to borrowers, during the quarter covered by the report.

(4) If a lender sells or otherwise transfers a loan within the calendar quarter in which the loan is disbursed, either the lender making the loan or the new holder may report the amount of the origination fee to the Secretary. In either case, the lender making the loan and any subsequent holder are jointly and severally liable for payment of the origination fee to the Secretary.

(b) *Penalty interest.* (1)(i) If the Secretary does not pay interest benefits or special allowance within 30 days after the Secretary receives an accurate, timely, and complete request for payment from a lender, the Secretary pays the lender penalty interest.

(ii) The payment of interest benefits or special allowance shall be deemed to occur, for purposes of this paragraph, when the Secretary—

(A) Authorizes the Treasury Department to pay the lender;

(B) Credits the payment due the lender against a debt which the Secretary determines is owed the Secretary by the lender; or

(C) Authorizes the Treasury Department to pay the amount due the lender to another Federal agency for credit against a debt that the agency has determined is owed it by the lender.

(2) Penalty interest is an amount that accrues daily on interest benefits and special allowance due to the lender. The penalty interest is computed at the daily rate of the sum of—

(i) The interest rate applicable to the eligible loans on which payment is requested; and

(ii) The special allowance rate on those loans computed under § 682.302(c) for the quarter for which payment is requested.

(3) The Secretary pays penalty interest from the later of—

(i) The 31st day after the final day of the quarter covered by the request for payment; or

(ii) The 31st day after the Secretary's receipt of an accurate, timely, and complete request for payment from the lender.

(4) Penalty interest continues to accrue through the day the Secretary pays the interest benefits and special allowance at issue, in accordance with paragraph (b)(1)(ii) of this section.

(5) A request for interest benefits and special allowance is considered timely only if it is received by the Secretary within 90 days following the end of the quarter to which the request pertains.

(6) A request for interest benefits and special allowance is not considered accurate if it requests payments to which the lender is not entitled under §§ 682.300—682.303, or includes loans that the Secretary has directed the lender in writing to exclude from the request.

(Reporting and recordkeeping requirements contained in paragraph (a)(3) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078, 1082, 1087-1)

Subpart D—Guarantee Agency Programs

SOURCE: 51 FR 40902, Nov. 10, 1986, unless otherwise noted.

§ 682.400 Agreements between a guarantee agency and the Secretary.

(a) The Secretary enters into agreements with a guarantee agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guarantee agency to participate in the GSLP and the PLUS Program and to receive the various payments and benefits incident to that participation.

(b) There are five agreements:

(1) *Basic program agreement.* In order to participate in the GSLP and the PLUS Program a guarantee agency must have a basic program agreement. Under this agreement—

(i) Borrowers whose GSLP loans are guaranteed may qualify for interest benefits that are paid to the lender on the borrower's behalf;

(ii) Lenders under the guarantee agency program may receive special allowance payments from the Secretary, and have death, disability, and bankruptcy claims paid by the Secretary through the guarantee agency; and

(iii) The guarantee agency may apply for the primary administrative cost allowance, and for the other agreements described in this section.

(2) *Federal advances for claim payments agreement.* A guarantee agency must have a Federal advance for claim payments agreement to receive and use Federal advances to pay default claims.

(3) *Reinsurance agreement.* A guarantee agency must have a reinsurance agreement to receive reimbursement from the Secretary for at least 80 percent of its losses on default claims.

(4) *Supplemental reinsurance agreement.* A guarantee agency must have a supplemental reinsurance agreement to receive reimbursement from the Secretary for up to 100 percent of its losses on default claims.

(5) *Secondary administrative cost allowance agreement.* A guarantee agency must have a secondary admin-

istrative cost allowance agreement to receive that allowance.

(c) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(d) All of the agreements are subject to subsequent changes in the Act or the regulations that apply to the GSLP or the PLUS Program.

(Authority: 20 U.S.C. 1072, 1078-1, 1078-2, 1082, 1087, 1087-1)

§ 682.401 Basic program agreement.

(a) In order to participate in the GSLP and the PLUS Program, a guarantee agency must enter into a basic agreement with the Secretary.

(b) In the basic agreement, the guarantee agency must agree to ensure that its loan guarantee program meets the following requirements at all times:

(1) *Aggregate loan limits.* The aggregate guaranteed unpaid principal amount for all GSLP and PLUS Program loans made to a borrower may not exceed the amounts set forth in § 682.204 (b) and (d).

(2) *Annual amounts.* (i) The annual loan amount authorized for an academic year must be at least $1,000, but may not exceed the amounts set forth in § 682.204 (a) and (c).

(ii) If the program guarantees loans to an eligible half-time student borrower or to a parent borrower on behalf of an eligible half-time student, the annual loan amount authorized for an academic year must be at least $500.

(iii) A guarantee agency may make the loan amounts authorized under paragraphs (b)(2)(i) and (ii) of this section applicable for either—

(A) A period that does not exceed 12 months; or

(B) A period in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore) or, in the case of schools using clock hours, completion of at least 900 clock hours.

(iv) In no case may the amount of the loan exceed the student's estimated cost of attendance for the academic period for which the loan is intended, less estimated financial assistance.

(3) *Duration of borrower eligibility.* (i) A student borrowing under the GSLP or the PLUS Program, and a parent borrowing on behalf of a student under the PLUS Program, must be eligible to borrow for any year of the student's study at a participating school; and

(ii) Loans must be available to or on behalf of any student for at least six academic years of study or the equivalent.

(4) *Borrower responsibilities.* (i) The borrower shall promptly notify the lender of any change of name or address.

(ii) The borrower shall give to the lender, as part of the loan application process—

(A) A statement, described in § 682.203, that the loan will be used for the cost of the student's attendance;

(B) Information that provides a basis for determining that the borrower is eligible for the loan;

(C) Information concerning the borrower's outstanding GSLP and PLUS Program loans, and, if the borrower is a parent, information on the outstanding GSLP and PLUS Program loans made to or on behalf of the student;

(D) A statement of the sources and amount of other financial assistance from Federal, State, institutional or other scholarship, grant, work, or loan programs, that the student has received or expects to receive for the period of enrollment for which the loan is intended;

(E) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (e.g., the student's enrollment status, financial assistance, and employment records); and

(F) Information from the school that provides a basis for determining that the student qualifies as an eligible student and the maximum amount that may be borrowed by or on behalf of the student.

(5) *Loan disbursement.* The guarantee agency shall require that a lender disburse loan funds as required by § 682.207.

(6) *Insurance premiums.* (i) The guarantee agency may charge the lender an insurance premium on each loan. The guarantee agency may use the proceeds of this charge only to guarantee loans and to cover costs incurred by the guarantee agency in the administration of its loan guarantee program. The lender may deduct this charge from the borrower's loan proceeds. The guarantee agency may not use the proceeds of this charge to make incentive payments to lenders or to increase yields to lenders.

(ii) The amount of the insurance premium may not exceed one percent per year of the unpaid principal balance of the loan, excluding interest or other charges the lender may have added to the principal balance.

(iii) The lender shall refund to the borrower, by a credit against the borrower's loan balance, all or a part of the insurance premium paid by the borrower on a GSLP loan under the following circumstances:

(A) The premium, or the portion thereof attributable to a portion of a multiply-disbursed loan, must be refunded if the loan check is returned uncashed to the lender.

(B) The premium must be refunded if the loan is repaid in full, or the loan check has not been cashed within 120 days of disbursement, or the loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date.

(C) If the insurance premium is charged for a period extending beyond one year after the borrower's anticipated graduation date, the insurance premium must be refunded to the borrower in accordance with paragraph (b)(6)(iv) of this section.

(iv) (A) If a borrower graduates or withdraws from school before the anticipated graduation date, the amount of any insurance premium on a GSLP loan attributable to the repayment period must be recomputed to take into account the declining principal balance of the loan. Any refund due the borrower as a result of this computation must be treated as a prepayment of the insurance premium for a later period, if a premium will be required for that period, or as a repayment of principal.

(B) If a borrower defaults, the amount of any insurance premium attributable to subsequent periods must be credited first to accrued interest and then to the principal balance of the loan.

(C) If a borrower prepays the entire unpaid balance of the loan, the amount of any insurance premium attributable to a period following the date of prepayment by two or more years must be refunded to the borrower.

(v) The insurance premium for a PLUS Program loan need not be refunded under any circumstances.

(7) *Guarantee liability.* The guarantee agency shall guarantee at least 80 percent of the unpaid principal balance of each loan guaranteed.

(8) *Guarantee agency administration.* In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, "supervision" includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(9) *Loan assignment.* (i) The guarantee agency shall allow a loan to be assigned only to—

(A) An eligible lender;

(B) The guarantee agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition; or

(C) The Secretary.

(ii) For the purpose of this paragraph, "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(10) *Standards and procedures.* (i) The guarantee agency shall establish, disseminate to concerned parties, and enforce standards and procedures for—

(A) Ensuring that all lenders in its program meet the definition of "eligible lender" in section 435(g)(1) of the Act;

(B) School and lender participation in its program;

(C) Limitation, suspension, or termination of school and lender participation;

(D) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(E) The timely filing by lenders of default, death, disability, and bankruptcy claims.

(ii) The guarantee agency shall ensure that its program, and all participants in its program, at all times meet the requirements of Subparts B, C, D and F of this part.

(11) The guarantee agency shall establish and follow a system and procedures for monitoring the enrollment status of a student borrower that include, at a minimum—

(i) Transmitting a student status confirmation request to the school for completion at least semi-annually; and

(ii) Reporting to the current holder of the loan, within 60 days of receipt of the completed request from the school, any change in the student's enrollment status that triggers—

(A) The commencement of the borrower's grace period; or

(B) The commencement or resumption of the borrower's immediate obligation to make scheduled payments.

(12) The guarantee agency shall submit, or require its lenders to submit, upon the Secretary's request, information the Secretary deems necessary for determining the amount of interest benefits and special allowance payable on the agency's guaranteed loans.

(13) The guarantee agency shall require lenders to submit to the agency the information necessary for the agency to complete the reports required by § 682.414(b).

(c) (1) The guarantee agency shall ensure that it, or an eligible lender described in section 435(g)(1)(D) of the Act, serves as a lender of last resort in its State.

(2) The lender of last resort shall make a GSLP loan to any eligible student who—

(A) Qualifies for interest benefits, pursuant to § 682.301 for a loan amount of at least $200; and

(B) Has been otherwise unable after conscientious efforts to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guarantee agency, or an eligible lender described in § 435(g)(1)(D) of the Act, may make a loan required by this paragraph through an agreement with an eligible lender.

(d) (1) The guarantee agency shall submit to the Secretary its application forms, promissory notes, and write-off criteria and procedures. The agency shall not use these materials until the Secretary approves them.

(2) The guarantee agency shall promptly submit to the Secretary its regulations, statements of procedures and standards, and other materials that substantially affect the operation of the agency's program whenever changes or new materials are proposed. Except as provided in paragraph (d)(1) of this section, the agency may use these materials unless and until the Secretary disapproves them.

(3) The guarantee agency shall ensure that all program materials meet the requirements of Federal and State law.

(Reporting and recordkeeping requirements contained in paragraph (b)(4) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078, 1078-2, 1082)

§ 682.402 Death, disability, and bankruptcy payments.

(a) *General.* (1) References in this section to death and disability claims relate only to loans made after December 14, 1968. If a borrower who received a loan covered by a reinsurance agreement prior to December 15, 1968, dies or becomes totally and permanently disabled, the Secretary reimburses the guarantee agency under the provisions of § 682.404.

(2) If a PLUS Program loan was obtained by two parents as co-makers and only one of the borrowers dies, becomes totally and permanently disabled, or has his or her loan obligation discharged in bankruptcy, the other

borrower remains obligated to repay the loan.

(3) The Secretary does not pay a death, disability, or bankruptcy claim if a default claim for the loan previously has been disapproved by the guarantee agency, or if the loan would not qualify either for payment of a default claim or for reinsurance payments.

(b) *Death.* (1) If an individual borrower dies, the borrower's obligation to make any further payments of principal and interest on the loan is cancelled.

(2) The lender may determine that a borrower has died on the basis of a death certificate or other proof of death that is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan is cancelled only upon a determination by the guarantee agency on the basis of other evidence that the agency finds conclusive.

(3) Once the lender has determined that the borrower has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(4) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's death.

(c) *Total and permanent disability.* (1) If the lender determines that an individual borrower is totally and permanently disabled, the borrower's obligation to make any further payments of principal and interest on the loan is cancelled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed before he or she applied for the loan, unless the borrower's condition has substantially deteriorated since he or she submitted the loan application, so as to render the borrower totally and permanently disabled.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender shall promptly request that the borrower or the borrower's representative obtain a certification from a physician who is a doctor of medicine or osteopathy and legally authorized to practice, on a form provided or approved by the Secretary, that the borrower is totally and permanently disabled. The lender shall continue collection until it receives the certification or receives a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled. After receiving the physician's certification or letter, the lender may not attempt to collect from the borrower or any endorser.

(3) After receiving the physician's certification described in paragraph (c)(2) of this section, the lender shall return any payments that it received from or on behalf of the borrower after the date the borrower or the borrower's representative notified the lender of the borrower's claim described in paragraph (c)(2) of this section.

(4) If the lender determines that a loan owed by a borrower who claims to be totally and permanently disabled is not eligible for cancellation for that reason, or if the lender has not received the physician's certification, described in paragraph (c)(2) of this section, within 60 days of the receipt of the physician's letter described in paragraph (c)(2) of this section, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender received the physician's letter described in paragraph (c)(2) of this section, and may capitalize, in accordance with § 682.202(b), any interest payments forborne.

(d) *Bankruptcy.* (1) If an individual borrower's repayment obligation on a loan is discharged in bankruptcy, the Secretary assumes the borrower's liability for unpaid principal and interest on the loan.

(2) The lender shall determine that a borrower has filed a bankruptcy petition on the basis of a notice of the first meeting of creditors received from the bankruptcy court.

(3) Once a lender determines that a borrower has filed a bankruptcy petition, the lender may not attempt to collect on the loan, except as required

by paragraph (d)(4)(ii) of this section, and shall file a proof of claim with the bankruptcy court within 30 days after the lender receives notice of the first meeting of creditors.

(4) (i) If the loan has not been in repayment for at least five years (exclusive of any applicable suspension of the repayment period) on the date the lender receives notice of the first meeting of creditors, the lender shall hold the loan and promptly inquire of the bankruptcy court whether a petition to have the loan obligation declared dischargeable in bankruptcy on grounds of undue hardship (hereinafter referred to as a "hardship petition") has been filed by the borrower.

(ii) If the lender determines, based on its inquiry under paragraph (d)(4)(i) of this section, that the borrower has not filed a hardship petition, the lender shall continue to hold the loan, and not attempt collection, until the bankruptcy action is concluded. Thereafter, the lender shall treat the loan as if the lender had exercised forbearance as to repayment of principal and interest from the date of the borrower's filing of the bankruptcy petition until the date the lender is notified that the bankruptcy action is concluded.

(iii) The lender shall file a bankruptcy claim on the loan with the guarantee agency, in accordance with paragraph (e) of this section, if—

(A) The borrower has filed a petition for relief under Chapter 13 of the Bankruptcy Code;

(B) The loan has been in repayment for more than five years (exclusive of any applicable suspension of the repayment period); or

(C) The loan has been in repayment for less than 5 years (exclusive of any applicable suspension of the repayment period) and the lender determines that the borrower has filed a hardship petition.

(e) *Claim procedures for a loan held by a lender*—(1) *Documentation.* A lender shall provide the guarantee agency with the following documentation when filing a death, disability, or bankruptcy claim:

(i) The original promissory note.

(ii) The loan application.

(iii) In the case of a death claim, those documents that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in paragraph (c)(2) of this section.

(v) In the case of a bankruptcy claim—

(A) Evidence that a bankruptcy petition has been filed, written evidence of the lender's efforts to determine if the borrower filed a hardship petition, an assignment to the guarantee agency of the lender's proof of claim, and all pertinent documents sent to or received from the bankruptcy court by the lender; and

(B) A statement of which the lender is aware of any facts that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy, and all documents supporting those facts.

(2) *Filing deadlines.* As a condition for obtaining payment, a lender shall comply with the following requirements for filing death, disability, and bankruptcy claims:

(i) A lender must file a death or disability claim with the guarantee agency within 60 days after the lender determines that a borrower has died or is totally and permanently disabled, in accordance with the procedures in paragraphs (b) and (c) of this section.

(ii) A lender must file a bankruptcy claim with the guarantee agency—

(A) Within 30 days after the lender receives notice of the first meeting of creditors in a borrower's bankruptcy proceeding, if the loan has been in repayment for more than 5 years (exclusive of any applicable suspension of the repayment period);

(B) Within 30 days after the lender determines that the borrower has filed a hardship petition, if the loan has been in repayment for less than 5 years (exclusive of any applicable suspension of the repayment period); or

(C) Within 30 days after receiving notice of the first meeting of creditors, if the borrower files a petition for relief under Chapter 13 of the Bankruptcy Code.

(f) *Payment of death, disability, and bankruptcy claims by the guarantee* *agency*—(1) *General.* After determining that a death, disability, or bankruptcy claim is valid, the guarantee agency shall pay the lender the amount of loss in accordance with this paragraph.

(2) *Amount of loss to be paid on a claim.* (i) The amount of loss to be paid on a death, disability, or bankruptcy claim is equal to the unpaid balance of principal and interest in accordance with paragraph (f)(3) of this section.

(ii) The unpaid balance of principal may include interest capitalized in accordance with § 682.202(b).

(3) *Payment of interest.* If the guarantee covers unpaid interest, the payment of an approved claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (e)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the guarantee agency for additional documentation necessary for the claim to be approved by the guarantee agency.

(iii) During the period required by the guarantee agency to approve the claim and to authorize payment.

(g) *Treatment of loans acquired by the guarantee agency through the payment of bankruptcy claims to lenders.* (1) After payment of a bankruptcy claim to a lender, the guarantee agency shall diligently contest the discharge of the loan by the bankruptcy court. Once the dischargeability of the loan has been decided in a bankruptcy action, the guarantee agency shall—

(i) Submit the bankruptcy claim to the Secretary for reimbursement, if the loan is discharged; or

(ii) Treat the loan as if forbearance had been exercised as to repayment of principal and interest from the date of filing of the bankruptcy petition until the date the court held the loan to be non-dischargeable, if the court so held, and either—

(A) Require the lender that filed the claim to repurchase the loan; or

(B) Permit another eligible lender to purchase the loan.

(2) In the case of a claim submitted under paragraph (g)(1)(i) of this section, the Secretary pays the guarantee agency the amount of loss that the guarantee agency paid the lender on the bankruptcy claim, plus interest that accrues through the earlier of—

(i) The date the Secretary authorizes payment to the guarantee agency; or

(ii) Sixty days after the date of discharge.

(h) *Claim procedures for loans held by a guarantee agency.* (1) The Secretary pays a death, disability, or bankruptcy claim on a loan held by a guarantee agency after the agency has paid a default claim to the lender thereon only under the following circumstances:

(i) The guarantee agency determines that the borrower has died, become totally and permanently disabled since applying for the loan, or had the loan obligation discharged in bankruptcy, in accordance with the procedures set forth in paragraphs (b) through (d) of this section. For purposes of this paragraph, references to the "lender" in paragraphs (b) through (d) of this section mean the guarantee agency.

(ii)(A) In the case of a PLUS Program loan, when the guarantee agency determines the borrower (or each of the co-makers) has died, become totally and permanently disabled since applying for the loan, or had the repayment obligation discharged in bankruptcy, within 10 years of the date the loan was made, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period; or

(B) In the case of a GSLP loan, when the guarantee agency determines the borrower has died, become totally and permanently disabled since applying for the loan, or had the loan discharged in bankruptcy, within 15 years of the date the loan was made, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 15-year maximum repayment period;

(iii) The guarantee agency has not written off the loan as uncollectible in accordance with the procedures established by the agency pursuant to § 682.410(b)(4)(x); and

(iv) The guarantee agency has exercised due diligence in the collection of the loan, in accordance with the procedures established by the agency pursuant to § 682.410(b)(4), until the borrower (or each of the co-makers) died, became totally and permanently disabled, or had the loan discharged in bankruptcy.

(2)(i) The Secretary pays the guarantee agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. Interest includes interest that accrues during the lesser of—

(A) The period from the date the guarantee agency determines that the borrower (or each of the co-makers) died, became totally and permanently disabled, or had the loan discharged in bankruptcy, until the Secretary authorizes payment; or

(B) Sixty days.

(ii) In addition, the Secretary pays the guarantee agency for any unpaid interest that the agency paid as part of the default claim and for which the agency was not previously reimbursed by the Secretary.

(i) *Payments.* If the guarantee agency receives any payments from or on behalf of the borrower on a loan on which the Secretary previously paid a bankruptcy claim, the guarantee agency shall remit 100 percent of these payments to the Secretary.

(j) *Suspension of repayment.* For purposes of this section, the term "applicable suspension of the repayment period" means any period of time during which the lender did not require the borrower to make payments (e.g., periods of deferment or forbearance).

(Reporting and recordkeeping requirements contained in paragraph (e)(1) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078-2, 1082, 1087)

§ 682.403 Federal advances for claim payments.

(a) The Secretary makes an advance to a guarantee agency that has a reinsurance agreement. The advance may be used only to pay guarantee claims. The Secretary makes an advance to—

(1) A State guarantee agency; or

(2) One or more private nonprofit guarantee agencies in a State if, during a fiscal year—

(i) The State does not have a guarantee agency program;

(ii) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have a program for that year; and

(iii) Each private nonprofit guarantee agency—

(A) Agrees to establish at least one office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agrees to encourage maximum commercial lender participation within the State, and to conduct periodic visits to at least the major lenders within the State;

(C) Agrees that the benefit of its loan guarantees will not be denied to students because of their choice of schools or lack of need; and

(D) Certifies that it is not an eligible educational institution, and that it does not have substantial affiliation with any eligible educational institution.

(b) A guarantee agency must apply in order to receive an initial advance.

(c)(1) An advance may be made to a new guarantee agency for each of five consecutive calendar years. A new agency is an agency that entered into a basic agreement on or after October 12, 1976, or that was not actively carrying on a loan guarantee program on or before October 12, 1976.

(2) (i) A guarantee agency may request that the initial advance be made on a specified date. The Secretary pays subsequent advances on the same date of four succeeding years that the initial advance was made.

(ii) An additional advance may be made to a private nonprofit guarantee agency only if the agency continues to qualify under paragraph (a) of this section.

(d) The Secretary makes an advance on terms and conditions specified in a Federal advances for claim payments agreement between the Secretary and the guarantee agency.

(e) In the case of a private nonprofit guarantee agency, the "outstanding insurance obligation," referred to in section 422(c)(4) of the Act, is determined separately for each State for which the agency has received an advance under this section.

(Authority: 20 U.S.C. 1072, 1082)

§ 682.404 Federal reinsurance agreement.

(a) (1) The Secretary may enter into a reinsurance agreement with a guarantee agency that has a basic program agreement. Under a reinsurance agreement, the Secretary reimburses the guarantee agency for 80 percent of its losses on default claim payments to lenders. This agreement is a prerequisite for the supplemental reinsurance agreement, under which the Secretary reimburses the guarantee agency for up to 100 percent of those losses.

(2) For the purpose of this section and § 682.405, "losses" means—

(i) The amount of unpaid principal and accrued interest the agency pays on a default claim filed by a lender on a reinsured loan, minus payments made by, or on behalf of, the borrower after the lender's claim is paid and before the Secretary reimburses the agency; and

(ii) An amount, not to exceed the lesser of $100 or two percent of the amount of unpaid principal the agency pays on a default claim, expended by the agency for the administrative costs of supplemental preclaim assistance for default prevention as defined in section 428(c)(6) of the Act, to the extent the agency has not been reimbursed for those costs under paragraph (e)(2)(ii) of this section or § 682.407.

(3) (i) Death and disability claims on loans made prior to December 15, 1968, are covered by the reinsurance agreement. The guarantee agency is not required to attempt to collect the loan from the borrower or the borrower's estate after the borrower dies or becomes totally and permanently disabled.

(ii) Death and disability claims on loans made after December 14, 1968, are not covered by the reinsurance agreement. Bankruptcy claims also are not covered. The Secretary's payments on these death, disability, and bankruptcy claims are addressed in § 682.402.

(4) A guarantee agency's loss on a loan that was outstanding when a reinsurance agreement was executed is covered by the reinsurance agreement only if the default on the loan occurs after the effective date of the agreement.

(b) In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has been terminated, whether to enter into a new agreement, the Secretary considers the adequacy of—

(1) Efforts by the guarantee agency and the lenders to which it provides guarantees to collect outstanding loans;

(2) Efforts by the guarantee agency to make GSLP and PLUS Program loans available to all eligible borrowers; and

(3) Other relevant aspects of the guarantee agency's program operations.

(c) The reinsurance agreement contains terms and conditions that the Secretary finds necessary to promote the purposes of the GSLP and the PLUS Program and to protect the United States from unreasonable risks of loss.

(d) A reinsurance agreement provides that payments made to a guarantee agency by a borrower must first be applied to the payment of all accrued interest, then to repayment of principal, then to payment of the agency's administrative costs of supplemental preclaims assistance for default prevention, and then to payment of other charges.

(e) (1) If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall pay to the Secretary the Secretary's equitable share of those payments.

(2) For the purpose of this section and § 682.405, "the Secretary's equitable share" means that portion of borrower payments, attributable to principal, interest and administrative costs of supplemental preclaims assistance for default prevention, which remains after the agency has deducted—

(i) An amount equal to the complement of the reinsurance percentage which was in effect when the reinsurance payment was made by the Secretary; and

(ii) An amount, not exceeding 30 percent of borrower payments, expended by the agency for the administrative costs of collection of loans, the administrative costs of preclaim assistance for default prevention, the administrative costs of supplemental preclaims assistance for default prevention, and the administrative costs of monitoring the enrollment status of students and repayment status of borrowers, to the extent the agency has not been reimbursed for these costs under paragraph (a)(2) of this section or § 682.407.

(3)(i) The terms "administrative costs of collection of loans," "administrative costs of preclaim assistance for default prevention," and "administrative costs of supplemental preclaims assistance for default prevention," as used in this paragraph, are defined in section 428(c)(6) of the Act. The term "administrative costs of monitoring the enrollment status of students and repayment status of borrowers," as used in this paragraph, has the same meaning as "administrative costs of monitoring the enrollment and repayment status of students," as defined in section 428(c)(6) of the Act, except that the reference to repayment status, in cases where the borrower is a parent, refers to that of the parent borrower.

(ii) The term "overhead costs" used in those definitions includes space and utilities costs.

(4) Unless the Secretary approves otherwise, the guarantee agency shall pay to the Secretary the Secretary's equitable share of borrower payments within 60 days of its receipt of the payments.

(5) If a guarantee agency, in determining the Secretary's equitable share of borrower payments, includes as an administrative cost a portion of the price of an asset it buys and—

(i) If the agency subsequently sells that asset, the agency shall promptly repay to the Secretary a percentage of the sale proceeds equal to the percentage of the original purchase price of the asset paid by the Secretary; or

(ii) If the agency subsequently converts the asset to a use unrelated to its GSLP or PLUS loan guarantee program, the agency shall promptly repay to the Secretary a percentage of the fair market value of the asset equal to the percentage of the original purchase price of the asset paid by the Secretary.

(Authority: 20 U.S.C. 1078, 1078-2, 1082)

§ 682.405 Supplemental Federal reinsurance.

(a) (1) The Secretary may enter into a supplemental reinsurance agreement with a guarantee agency that has a reinsurance agreement and that meets the requirements of this section. Under a supplemental reinsurance agreement, the Secretary reimburses the guarantee agency for up to 100 percent of its losses, with the following exceptions:

(i) When the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year reaches five percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guarantee agency during that fiscal year equals 90 percent of its losses.

(ii) When the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year reaches nine percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guarantee agency during that fiscal year is 80 percent of its losses.

(2) For purposes of this paragraph, the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year does not include amounts paid on claims by the guarantee agency—

(i) On loans considered in default under § 682.412(f); or

(ii) Under a policy established by the agency that is consistent with § 682.509(a)(1).

(3) Notwithstanding paragraph (a)(1) of this section, for a guarantee agency that entered into a basic program agreement under section 428(b)

of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976, the Secretary pays 100 percent of its losses under a supplemental reinsurance agreement during five consecutive fiscal years beginning with the first year of its operation. The Secretary monitors programs of this type and, if an agency does not prudently administer its program, the Secretary may determine that it does not continue to qualify for this exception.

(b) For purposes of this section—

(1) "Amount of loans in repayment" means the original principal amount of all loans guaranteed by the agency minus—

(i) The original principal amount of loans on which—

(A) The borrower has not yet reached the repayment period;

(B) Payment in full by the borrower has been made; or

(C) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the agency for guarantee claims on loans, exclusive of claims paid—

(A) On loans considered in default under § 682.412(f); or

(B) Under a policy established by the agency that is consistent with § 682.509(a)(1).

(2) "Losses" is defined in § 682.404(a).

(3) "The Secretary's equitable share" is defined in § 682.404(e).

(c) (1) If a guarantee agency enters into a supplemental reinsurance agreement for both the GSLP and the PLUS Program, the agency must include its loans under both programs in calculating the Secretary's reinsurance payment percentage and the amount of loans in repayment.

(2) If a guarantee agency that has a reinsurance agreement for PLUS loans and GSLP loans under § 682.404 enters into a supplemental reinsurance agreement for one, but not both, of the programs, the guarantee agency must maintain separate records for each program sufficient to enable the Secretary to determine—

(i) The reinsurance percentage payable by the Secretary on reinsurance claims filed by the agency under each program; and

(ii) The Secretary's equitable share of borrower payments, as defined in § 682.404(e), received after payment by the Secretary of reinsurance claims under each program.

(d)(1) The supplemental reinsurance agreement requires that—

(i) The agency shall ensure that the program requirements of paragraph (e) of this section are continuously met;

(ii) An agreement may be renewed only if the agency's program complies with all the terms of the agreement and all pertinent provisions of the Act and applicable regulations; and

(iii) Before the Secretary pays a supplemental reinsurance claim, the guarantee agency must submit to the Secretary the quarterly report required by the Secretary for the previous quarter ending September 30, containing complete and accurate data, in order for the Secretary to calculate the amount of loans in repayment at the end of the preceding fiscal year.

(2) A supplemental reinsurance agreement may contain other requirements that the Secretary finds necessary.

(e)(1) *GSLP loan maximums.* (i) The maximum annual amount of a GSLP loan that a guarantee agency guarantees for an eligible student who is carrying at least a half-time workload for an academic year or its equivalent must be the maximum loan amount specified in § 682.204(a).

(ii) The maximum aggregate unpaid principal amount of GSLP loans that a guarantee agency guarantees for an eligible student must be the maximum amounts specified in § 682.204(b).

(2) *PLUS Program loan maximums.* (i) The maximum annual amount, attributable to one or more PLUS Program loans, that the agency guarantees for or on behalf of an eligible student who is carrying at least a half-time workload for an academic year or its equivalent, must be—

(A) The maximum loan amounts specified in § 682.204(c) (1) and (2); and

(B) At least $2,500 but not more than $3,000, in the case of a parent borrower on behalf of each eligible student.

(ii) The maximum aggregate unpaid principal, attributable to PLUS Program loans, that the agency guarantees for or on behalf of an eligible student must be—

(A) The amounts specified in § 682.204(d) (1) and (2); and

(B) At least $12,500 but not more than $15,000, in the case of a parent borrower on behalf of each eligible student.

(3) *Guarantee liability.* The guarantee agency shall guarantee 100 percent of the unpaid principal of each loan guaranteed.

(4) *School eligibility.* Except in the case of correspondence schools, a guarantee agency's eligibility criteria for the participation of schools in its program may not be more stringent than those for the FISLP and the Federal PLUS program. However, the agency may exclude a school from its program if—

(i) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR Part 668, or by the agency under standards and procedures approved by the Secretary; or

(ii) There is a State constitutional prohibition affecting the school's eligibility.

(5) *School lender provisions.* (i) The agency shall provide that a school may be a lender in its program under reasonable criteria unless—

(A) The school's lending eligibility has been limited, suspended, or terminated by the Secretary under § 682.608 or Subpart G of this part, or by the agency under standards and procedures approved by the Secretary; or

(B) There is a State constitutional prohibition affecting the school's lending eligibility.

(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographic area that the agency serves.

(6) *Out-of-State schools.* The agency shall guarantee GSLP or PLUS loans for eligible borrowers who are legal residents of the State where the agency operates, but who attend participating schools out of the State, or, in the case of parent borrowers, are legal residents of the State where the agency operates, but are borrowing on behalf of students attending participating schools out of the State. In guaranteeing these loans, the agency must not impose any restrictions not applicable to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal residents of the State and are borrowing for students attending in-State schools.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082)

§ 682.406 Conditions of reinsurance coverage.

(a) The Secretary makes a reinsurance payment on a loan to a guarantee agency only if—

(1) The lender exercised due diligence in making, disbursing and servicing the loan, as prescribed by rules of the agency;

(2)(i) The loan check was cashed within 120 days after disbursement; or

(ii) The loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date.

(3) The lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of § 682.411;

(4) The loan was in default before the agency paid a default claim filed thereon;

(5) The lender filed a default claim thereon with the guarantee agency within 90 days of default;

(6) The lender satisfied all conditions of guarantee coverage set by the agency unless the agency reinstated guarantee coverage on the loan, following the lender's failure to satisfy such a condition, pursuant to policies and procedures established by the agency.

(7) The agency paid a default claim filed by the lender thereon with the agency within 90 days of the date the lender filed the claim;

(8) The agency submitted a request for the payment no earlier than 90

days following default, on a form required by the Secretary; and

(9) The agency and lender complied with all other Federal requirements with respect to the loan.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make a reinsurance payment when, in the Secretary's judgment, the best interests of the United States so require.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082)

§ 682.407 Administrative cost allowances for guarantee agencies.

(a)(1) The Secretary pays to a guarantee agency having a basic program agreement a primary administrative cost allowance and, to an agency having a reinsurance agreement, a secondary administrative cost allowance.

(2) Payments of allowances under this section to a guarantee agency for any fiscal year, for each administrative cost allowance, equal one-half of one percent of the total principal amount of loans guaranteed by the agency during that fiscal year.

(b)(1) The guarantee agency must submit an application for each allowance to the Secretary by January 1 of the fiscal year for which it is requesting the allowance.

(2) In addition to other information and assurances that the Secretary may reasonably require, the application must contain—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs that will be eligible for payments under this section;

(iii) Assurances that sufficient administrative and fiscal procedures, including an independent audit, conducted in accordance with § 682.410(b)(1), will be used to ensure that administrative cost allowances are used in accordance with the provisions of this section;

(iv) A report of the most recent audit, conducted in accordance with § 682.410(b)(1), submitted in a format satisfactory to the Secretary;

(v) Assurances that the guarantee agency will furnish any further information, including estimates, that the Secretary may reasonably require to carry out the provisions of this section;

(vi) For the primary allowance only, an estimate of the total amount of new loan volume expected to be guaranteed during the fiscal year; and

(vii) For the secondary allowance only, assurances that the agency's program—

(A) Meets and will continue to meet all the requirements contained in § 682.405(e) for a supplemental reinsurance agreement;

(B) Guarantees GSLP or PLUS loans for eligible students who are not legal residents of the State where the agency operates, but who attend participating schools in the State, other than correspondence schools, without imposing any restrictions not imposed on legal residents of the State who attend schools in the State other than correspondence schools; and

(C) Guarantees PLUS loans to parent borrowers who are not legal residents of the State where the agency operates, but who are borrowing for students attending participating schools in the State, other than correspondence schools, without imposing any restrictions not imposed on residents of the State who borrow for students attending schools in the State, other than correspondence schools.

(4) The Secretary's payment of the secondary allowance establishes an agreement between the Secretary and the guarantee agency with respect to the assurances contained in the application.

(c)(1) A guarantee agency may use the administrative cost allowances only to meet administrative costs related to the GSLP and the PLUS Program.

(2) A guarantee agency may not use the administrative cost allowances to meet costs—

(i) Taken into account by the agency under the formula for determining the "Secretary's equitable share" of borrower payments made after the Secretary has paid reinsurance claims to the agency under § 682.404(e); or

(ii) For which the agency has been, or will be, reimbursed from a source other than the payment provided by this section.

(3) If a guarantee agency uses the allowances paid under this section to pay for a portion of the price of an asset it buys and—

(i) If the agency subsequently sells that asset, the agency shall promptly repay to the Secretary a percentage of the sale proceeds equal to the percentage of the original purchase price of the asset paid for with the allowances; or

(ii) If the agency subsequently converts the asset to a use unrelated to its GSLP or PLUS loan guarantee program, the agency shall promptly repay to the Secretary a percentage of the fair market value of the asset equal to the percentage of the original purchase price of the asset paid for with the allowances.

(Reporting and recordkeeping requirements contained in paragraph (b)(2) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082)

§ 682.408 GSLP loan disbursement through a guarantee agency escrow agent.

(a) *General.* (1) A guarantee agency may act as an escrow agent for the purpose of receiving GSLP loan proceeds disbursed by an eligible lender, other than a school or State lender, and transmitting those proceeds to borrowers, if the lender and guarantee agency have entered into an agreement for this purpose.

(2) In its capacity as escrow agent, the guarantee agency may—

(i) Commingle the proceeds of the GSLP loans paid to it pursuant to an escrow agreement;

(ii) Invest the GSLP loan proceeds only in obligations of the Federal Government or obligations that are insured or guaranteed by the Federal Government; and

(iii) Retain for its own use interest or other earnings on those investments.

(b) *Disbursement by the lender.* Subject to § 682.207(b)(1)(iii), the lender may disburse the loan proceeds to the escrow agent using any method agreed to by the escrow agent and the lender.

(c) *Transmittal of loan proceeds to a school by the escrow agent.* The escrow agent shall transmit loan proceeds received from a lender under this section to the school in accordance with the requirements of § 682.207(b)(1) (ii) and (iv) no later than 30 days after receipt of the funds from the lender.

(d) *Return of untransmitted proceeds.* The escrow agent shall return any untransmitted proceeds of a loan to the lender within 15 working days after learning that the student has not enrolled, or has ceased to be enrolled, on at least a half-time basis for the period of enrollment for which the loan was intended.

(Authority: 20 U.S.C. 1078, 1082)

§ 682.409 Mandatory assignment by guarantee agencies of defaulted loans to the Secretary.

(a) When the Secretary determines that such action is necessary to protect the Federal fiscal interest, the Secretary may direct a guarantee agency to assign to the Secretary for collection a defaulted loan on which the Secretary has made a payment under § 682.404 or § 682.405. In making this determination, the Secretary considers all relevant information available to the Secretary, including any information and documentation submitted by the guarantee agency.

(b)(1) When a guarantee agency assigns a defaulted loan to the Secretary under this section, the agency releases all rights and title to that loan. The Secretary does not pay the guarantee agency any compensation for a loan assigned under this section.

(2) The agency does not share in any amounts received by the Secretary on a loan assigned under this section, regardless of the reinsurance percentage paid on the loan or the agency's previous collection costs.

(c)(1) A guarantee agency shall assign a loan to the Secretary under this section at such time, in such a manner, and with such documentation as the Secretary may require.

(2) The documents that the assignor agency shall submit with a loan include, but are not limited to—

(i) The loan application;

(ii) The promissory note; and

(iii) The payment and collection histories for the loan.

(3) The guarantee agency shall execute an assignment to the United States of America of all right, title, and interest in the promissory note evidencing a loan assigned under this section.

(d) Assignment of a loan does not affect calculation of any default rate under this part. However, the Secretary accounts, in calculations of relevant default rates, for any collections achieved by the Secretary on loans assigned by an agency.

(Reporting and recordkeeping requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078, 1078-2, 1082)

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) *Fiscal requirements.* A guarantee agency shall establish, at a minimum, the following fiscal procedures:

(1) The guarantee agency shall establish and maintain a reserve fund to which the guarantee agency shall credit—

(i) Federal advances obtained under, and matching funds required by, section 422(a) of the Act;

(ii) Funds appropriated by a State for the agency's loan guarantee program;

(iii) Federal advances obtained under § 682.403;

(iv) Funds received by the guarantee agency as loan insurance premiums;

(v) Administrative cost allowances received by the guarantee agency under § 682.407;

(vi) Funds received by the guarantee agency for the agency's loan guarantee program from gift, grant, or other sources;

(vii) Funds collected on defaulted loans;

(viii) Death, disability, bankruptcy, and reinsurance payments received from the Secretary; and

(ix) Funds earned from investments under paragraph (a)(5) of this section.

(2) Except as provided in paragraphs (a)(3) and (a)(4) of this section, a guarantee agency may use the assets of the reserve fund established under paragraph (a)(1) of this section only to—

(i) Guarantee loans under the guarantee agency's loan guarantee program;

(ii) Pay default claims;

(iii) Pay death, disability, and bankruptcy claims;

(iv) Refund overpayments of insurance premiums;

(v) Pay to the Secretary the Secretary's equitable share of borrower payments; and

(vi) Repay advances made by the Secretary.

(3) Except as provided in paragraph (a)(4) of this section, a guarantee agency may also use loan insurance premiums, administrative cost allowances, interest or investment earnings, and funds described in paragraph (a)(1)(vi) of this section for payments necessary for the proper administration of the guarantee agency's loan guarantee program.

(4)(i) The guarantee agency may use the amount of Federal advances identified in paragraph (a)(1)(iii) of this section, and interest or other earnings on those advances, only to pay default claims.

(ii) The guarantee agency shall account separately for the funds described in paragraph (a)(4)(i) of this section.

(5) The guarantee agency may invest the assets of the reserve fund described in paragraph (a)(1) of this section only in low-risk securities, such as obligations issued or guaranteed by the United States or a State, and shall exercise the level of care in that investment required of a fiduciary charged with the duty of investing the money of others.

(6) If the guarantee agency uses loan insurance premiums or funds earned from investments under paragraph (a)(5) of this section to buy an asset and—

(i) If the agency subsequently sells that asset, the agency shall promptly deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the sale proceeds equal to the percentage of the original purchase price of the asset paid with the insurance premiums and investment earnings; or

(ii) If the agency subsequently converts the asset to a use unrelated to its GSLP or PLUS loan guarantee program, the agency shall promptly deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the fair market value of the asset equal to the percentage of the original purchase price paid with the insurance premiums or investment earnings.

(b) *Administrative requirements.* A guarantee agency shall establish, at a minimum, the following administrative procedures:

(1) The guarantee agency shall arrange for an independent biennial financial and compliance audit of the agency's guaranteed loan program that meets each of the following requirements:

(i) The audit must examine the agency's compliance with the Act, applicable regulations, and agreements entered into under this part.

(ii) The audit must examine the agency's financial management of its loan guarantee program.

(iii) The audit must be conducted in accordance with the general standards and the standards for financial and compliance audits of the United States General Accounting Office's (GAO) *Standards for Audit of Governmental Organizations, Programs, Activities and Functions.* Procedures for audits are contained in audit guides developed by, and available from, the Office of the Inspector General of the Department. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO's *Standards.*

(iv) The audit must be conducted not less frequently than once every two years, and must be submitted to the Secretary within six months of the end of the audit period. The first audit must cover the agency's activities for a period beginning no later than the effective date of this requirement. Each subsequent audit must cover the agency's activities for a period beginning no later than the end of the period covered by the preceding audit.

(v) With regard to a guarantee agency that is an agency of a State government, an audit conducted in accordance with 31 U.S.C. 7502 satisfies the requirements of this paragraph for the period covered by the audit.

(2) The guarantee agency shall charge interest on the amount for which the Secretary has paid a reinsurance claim to the guarantee agency, at a rate that is the greater of—

(i) The rate established by the terms of the original promissory note; or

(ii) The rate provided for by State law.

(3) The guarantee agency shall promptly report to all national credit bureaus—

(i) The date of default;

(ii) Information concerning collection of the loan, including the repayment status of the loan; and

(iii) The date the loan is fully repaid by or on behalf of the borrower or discharged by reason of the borrower's death, bankruptcy or total and permanent disability.

(4)(i) The guarantee agency shall engage in at least the collection efforts described in paragraphs (b)(4) (iii) through (ix) of this section on a loan on which it pays a default claim filed by a lender.

(ii)(A) The periods of time set forth in paragraphs (b)(4) (iii) through (vii) of this section refer to the number of days that elapse from the date the agency pays a default claim on a loan or, in the case of a borrower whom the agency locates through the use of skip tracing under paragraph (b)(4)(xii) of this section, the number of days that elapse from the date the agency obtains the borrower's correct address. References to the "borrower" include all endorsers on a loan.

(B) Upon receipt of a payment from a borrower, the agency is not required to follow the specific collection efforts described in paragraphs (b)(4) (iii) through (vii), but shall diligently attempt to collect the loan for 60 days following receipt of the payment. If no subsequent payments are received during the 60-day period, the agency shall resume its use of the collection efforts described in this paragraph (b)(4), treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(4)(iv) of this section.

(iii) One–45 days: During this period, the agency shall—

(A) Send a written notice to the borrower stating that the agency has paid a default claim filed by the lender on the loan, and has taken assignment of the loan. In addition, the notice must forcefully demand that the borrower immediately commence repayment of the loan, and must inform the borrower that the agency will report the default to all national credit bureaus, thereby damaging the borrower's credit rating, may institute a civil suit against the borrower to compel repayment of the loan, and may refer the debt to the Department for collection by offset against Federal income tax refunds due the borrower; and

(B) Diligently attempt to contact the borrower by telephone to demand repayment of the loan.

(iv) Forty-six–90 days: During this period the agency shall—

(A) Diligently attempt to contact the borrower by telephone to demand repayment of the loan; and

(B) Send a written notice to the borrower demanding that the borrower immediately commence repayment of the loan, and informing the borrower that the default has been reported to a credit bureau and that the borrower's credit rating has thereby been damaged.

(v) Ninety-one–135 days: During this period, the agency shall—

(A) Diligently attempt to contact the borrower by telephone to demand repayment of the loan; and

(B) Send one additional collection letter at least as forceful as the notice described in paragraph (b)(4)(iii)(A) of this section.

(vi) One hundred thirty-six–180 days: During this period, the agency shall send a written notice to the borrower forcefully demanding repayment in full on the loan, and indicating that it is the final notice the borrower will receive before the agency may institute a civil suit to compel repayment of the loan;

(vii) One hundred eighty-one–225 days: During this period, but not sooner than 30 days after sending the notice described in paragraph (b)(4)(vi) of this section, the agency shall institute a civil suit against the borrower for repayment of the loan, unless the agency determines, and documents in the borrower's file, that—

(A) The cost of litigation would exceed the likely recovery if litigation were commenced; or

(B) The borrower does not have the means to satisfy a judgment on the debt, or a substantial portion thereof.

(viii)(A) If the agency does not institute a civil suit against the borrower for repayment of the loan as a result of a determination made pursuant to paragraph (b)(4)(vii)(B) of this section, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy a judgment on the debt, or a substantial portion thereof.

(B) If the agency determines that the borrower has acquired the means to satisfy a judgment on the debt, or a substantial portion thereof, and that the cost of litigation would not exceed the likely recovery if litigation were commenced, then if subsequent collection efforts are not successful, the agency shall, no later than 60 days after the determination, institute a civil suit against the borrower for repayment of the loan.

(C) Determinations made pursuant to this paragraph must be documented in the borrower's file.

(ix)(A) The agency shall diligently attempt to enforce a judgment obtained against a borrower respecting a loan. If, after doing so, the agency is unable to obtain full satisfaction of the judgment because the borrower lacks the means to pay, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy the remainder of the judgment.

(B) If the agency determines that the borrower has acquired the means to satisfy the remainder of the judgment, the agency shall, not later that 60 days thereafter, notify the borrower in writing of its intention to resume enforcement efforts on the judgment unless the borrower makes payment in full on all outstanding amounts.

(C) If the borrower does not make payment in full within 30 days of the date the agency sends the notice described in the preceding paragraph, the agency shall, within 30 days thereafter, institute civil proceedings to enforce the remainder of the judgment.

(x) The agency may discontinue conducting the semi-annual inquiries concerning a borrower's means required by paragraphs (b)(4) (viii) and (ix) of this section only in accordance with write-off criteria and procedures approved by the Secretary.

(xi) Not withstanding paragraphs (b)(4) (vii) through (x), the agency shall file a civil suit against the borrower for repayment of the loan, or to enforce a judgment obtained thereon, prior to the date on which the applicable statute of limitations elapses unless the agency—

(A) Determines, and documents in the borrower's file, that the cost of litigation would exceed the likely recovery if litigation were commenced; or

(B) Has previously written off the debt in accordance with write-off criteria and procedures approved by the Secretary.

(xii) Not later than 10 days after its receipt of information indicating that it does not know the borrower's current address, or the 60th day after its payment of a default claim on a loan, whichever is later, the agency shall diligently attempt to locate the borrower through the use of all available skip-tracing techniques, including, but not limited to, any skip-tracing assistance available from the Internal Revenue Service, credit bureaus, and State motor vehicle departments.

(c) *Enforcement requirements.* A guarantee agency shall take such measures, and establish such controls, as are necessary to ensure its vigorous enforcement of all Federal, State, and guarantee agency requirements applicable to its loan guarantee program, including, at a minimum, the following:

(1) Conducting comprehensive biennial on-site program reviews of at least—

(i) Each participating lender whose loan volume guaranteed by the agency in the preceding year—

(A) Equaled or exceeded two percent of the total of all loans guaranteed in that year by the agency; or

(B) Was one of the ten largest among lenders whose loans were guaranteed in that year by the agency;

(ii) Each participating school whose students received, or benefitted from, loans guaranteed by the agency in the preceding year, the total amount of which—

(A) Equaled or exceeded two percent of the total of all loans guaranteed in the preceding year by the agency; or

(B) Was one of the ten largest among schools whose students received or benefitted from loans guaranteed in that year by the agency and

(iii) Each participating school located in a State for which the guarantee agency is the principal guarantee agency that has a fiscal year default rate, as defined in 34 CFR 668.15, for either of the two immediately preceding fiscal years, as defined in § 668.15, that exceeds 20 percent, unless the school is under a mandate from the Secretary under 34 CFR 668.15 to take specific default reduction measures, or if the total dollar amount of loans entering repayment in each fiscal year on which the default rate over 20 percent is based does not exceed $100,000.

(2) Seeking prompt repayment of all funds found in those reviews to have been improperly retained by the participants, and monitoring the implementation by participants of corrective actions required by the agency as a result of those reviews.

(3) Adopting procedures for identifying fraudulent loan applications.

(4) Undertaking, or arranging with State or local law enforcement agencies for, the prompt and thorough investigation of all allegations and indications of criminal or other programmatic misconduct, including violations of Federal law or regulations, by its program participants.

(5) Promptly reporting all of the allegations and indications having a substantial basis in fact, and the scope, progress, and results of the agency's investigations thereof, to the Secretary.

(6) Referring appropriate cases to State or local authorities for criminal prosecution or civil litigation.

(7) Cooperating with all program reviews, investigations, and audits con-

ducted by the Secretary relating to the agency's loan guarantee program.

(Authority: 20 U.S.C. 1078, 1078-1, 1082, 1094, 1097)

[51 FR 40902, Nov. 10, 1986, as amended at 54 FR 24120, June 5, 1989]

§ 682.411 Due diligence by lenders in the collection of guarantee agency loans.

(a) In the event of delinquency on a loan guaranteed by a guarantee agency, the lender shall engage in at least the collection efforts described in paragraphs (c) through (h) of this section.

(b) For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment not later made, or 30 days after the day the lender discovers that the borrower has entered the repayment period, whichever is later. If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment not later made.

(c) One—30 days delinquent: During this period, the lender shall send at least two written notices or collection letters to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency.

(d) Thirty-one—60 days delinquent: During this period, the lender shall make diligent efforts to contact the borrower by telephone. If the lender is unable, despite those efforts, to reach the borrower by telephone, the lender shall send at least two forceful collection letters to the borrower urging the borrower to cure the delinquency. The letters shall also warn the borrower that, if the delinquency is not cured, the lender will assign the loan to the guarantee agency which in turn will report the default to a credit bureau, thereby damaging the borrower's credit rating, and may bring suit against the borrower to compel repayment of the loan.

(e) Sixty-one—150 days delinquent: During each thirty-day period comprising this period, the lender shall again make diligent efforts to contact the borrower by telephone. During each thirty-day period, if the lender is unable, despite those efforts, to reach the borrower by telephone, the lender shall send at least one more collection letter no less forceful than those described in paragraph (d) of this section.

(f) One hundred fifty-one—180 days delinquent: During this period, the lender shall send a final demand letter to the borrower, unless the borrower's address is unknown, requiring repayment of the loan in full and notifying the borrower that a default will be reported to all national credit bureaus. The lender shall allow the borrower at least 30 days to respond to the final demand letter and to make payments sufficient to bring the loan out of default before filing a default claim on the loan or reporting that default to a credit bureau.

(g) Within 10 days of its receipt of information indicating it does not know the borrower's current address, the lender shall diligently attempt to locate the borrower, through the use of normal commercial skip-tracing techniques. These efforts shall include, but not be limited to, contacting the endorser, relatives, references, and any other individuals and entities identified in the borrower's loan file.

(h) If the agency that guaranteed the loan offers preclaims assistance, the lender shall request that assistance within 10 days of the date that assistance is first available from the agency, and shall, not later than 30 days after sending that request unless the loan has been brought current prior to that thirtieth day, notify the school for attendance at which the loan was made of the request by providing the school with a copy of that request, or by other means.

(Approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078, 1078-1, 1082, 1087-1)

[51 FR 40902, Nov. 10, 1986, as amended at 54 FR 24120, June 5, 1989]

§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.

(a) The lender shall immediately send a final demand letter to the borrower, as required by § 682.411(g), when it learns that the borrower or, if applicable, the student on whose behalf a parent has borrowed—

(1) Did not qualify for all or a portion of a loan made under this part; or

(2) Has received a GSLP loan subject to payment of Federal interest benefits as provided under § 682.301, but is in fact ineligible for some or all of those interest benefits.

(b) The lender shall neither bill the Secretary nor be entitled to interest benefits on a loan after it learns that one of the conditions described in paragraph (a) of this section exists with respect to the loan.

(c) In the final demand letter, transmitted under paragraph (a) of this section, the lender shall demand that, within 30 days, the borrower repay in full the principal amount of the ineligible portion of the loan, accrued interest thereon, and all interest benefits paid by the Secretary thereon.

(d) If the borrower repays the amounts described in paragraph (c) of this section within the 30-day period, the lender shall, on its next quarterly interest billing submitted under § 682.304, refund to the Secretary the interest benefits repaid by the borrower, and all other interest benefits previously billed to the Secretary on the ineligible portion of the loan.

(e) If the borrower repays to the lender the principal amount of the ineligible portion of the loan, the lender shall treat that payment as a prepayment on the loan.

(f) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the loan shall be considered in default. The lender shall, on its next quarterly interest request submitted under § 682.304, refund the interest paid on the ineligible portion of the loan by the Secretary, and the lender shall file a default claim thereon with the guarantee agency for the entire unpaid balance of principal and accrued unpaid interest within the time specified in § 682.406(a)(4).

(Reporting and recordkeeping requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1077, 1078, 1078-2, 1082)

§ 682.413 Remedial actions.

(a) The Secretary requires a lender to repay interest benefits and special allowance on a loan guaranteed by a guarantee agency—

(1) For any period beginning on the date of a failure by the lender, with respect to the loan, to comply with any of the requirements set forth in § 682.406(a)(1) through (a)(5) and (a)(9);

(2) For any period beginning on the date of the lender's failure, with respect to the loan, to meet a condition of guarantee coverage established by the guarantee agency, to the date, if any, on which the guarantee agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(3) For any period as to which the lender, with respect to the loan, violates the requirements of Subpart C of this part; and

(4) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under § 682.302(d).

(b) The Secretary requires a guarantee agency to repay reinsurance payments on a loan—

(1) If the lender or the agency failed to meet the requirements of § 682.406(a); or

(2) If the agency failed to exercise due diligence in collection of the loan in accordance with procedures established under § 682.410(b)(4).

(c) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guarantee agency that makes an incomplete or incorrect statement in connection with any agreement entered into under this part, or violates any applicable Federal requirement:

(1) Require the repayment by the agency of payments made to the agency.

(2) Withhold payments to the agency.

(3) Limit the terms and conditions of the agency's continued participation in the GSLP or PLUS Program.

(4) Suspend or terminate agreements with the agency.

(5) Require repayment from the agency of any related payments which the Secretary has become obligated to make to others.

(d) The Secretary's decision to require repayment of funds by a lender or agency, to withhold funds from an agency, or to limit, suspend, or terminate an agency's GSLP or PLUS Program participation, does not become final until the Secretary provides the lender or agency with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments from an agency or suspend an agreement with an agency prior to giving notice and an opportunity to be heard if the Secretary finds that emergency action necessary to prevent substantial harm to Federal interests.

(e) Notwithstanding paragraphs (a) through (d) of this section, the Secretary may waive the right to require repayment of funds by a lender or agency if, in the Secretary's judgment, the best interests of the United States so require.

(f) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against a lender or guarantee agency under this section is conclusive and binding on the lender or agency. (Note: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.)

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1087-1, 1097)

§ 682.414 Records, reports, and inspection requirements for guarantee agency programs.

(a) *Records.* (1) A guarantee agency shall keep the records required by this section and such other records as are necessary to document fully the accuracy of reports required by this subpart and the right of the agency to receive or retain payments made by the Secretary under this part.

(2) The guarantee agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectable in accordance with the agency's write-off procedures. For the purposes of this section, the term "paid in full" includes loans paid by the Secretary on account of the borrower's death or permanent and total disability, or discharge of the loan in bankruptcy.

(3)(i) The guarantee agency shall require a participating lender to keep complete and accurate records of each loan that it holds, including but not limited to the records described in paragraph (a)(3)(ii) of this section. The records must be organized in such a way as to permit ready identification of the current status of each loan.

(ii) The lender shall keep—

(A) The loan application;

(B) The original promissory note, including the repayment instruments, until the loan is fully repaid, after which a copy is required;

(C) The repayment schedule;

(D) A record of each disbursement of loan proceeds;

(E) Notices of changes in a borrower's address and status as at least a half-time student;

(F) Evidence of the borrower's eligibility for a deferment;

(G) The documents required for the exercise of forbearance;

(H) Documentation of the assignment of the loan;

(I) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment which was attributed to principal and to interest;

(J) A collection history, showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan, each communication between the lender and a credit bureau regarding the loan, each effort to locate a borrower whose address was unknown at any time and each request by the lender for preclaims assistance on the loan; and

(K) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.

(iii) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary or the guarantee agency may require the retention of records beyond this minimum period.

(4)(i) A guarantee agency or lender may store the records specified in paragraphs (a)(3)(ii)(C) through (K) of this section on microfilm or computer format.

(ii) A lender or guarantee agency holding a promissory note shall retain the original note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guarantee agency shall either return the original note to the borrower or notify the borrower, under a procedure that is alternatively acceptable under State law, that the loan is paid in full, and retain a copy for the prescribed period.

(iii) Either the lender or guarantee agency shall retain the original loan application or a copy.

(b) *Reports.* A guarantee agency shall submit to the Secretary the following reports:

(1) A report concerning the status of the agency's reserve fund and the operation of the agency's loan guarantee program, at such time and in the manner that the Secretary may reasonably require. The Secretary does not pay the agency amounts that are dependent upon data contained in the report until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories of originating lenders on all loans guaranteed after December 31, 1980:

(i) Schools.

(ii) State or private nonprofit lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, and credit unions).

(iv) All other types of lenders.

(3) For a guarantee agency with a supplemental reinsurance agreement, by July 1 of each year, a report on—

(i) Its eligibility criteria for school lenders;

(ii) Its procedures for the limitation, suspension, and termination of schools and lenders;

(iii) A list of all schools that applied for lender eligibility in the preceding 12 months and a summary of the action taken on those applications;

(iv) A list of all school lenders participating in the agency's program;

(v) A description of any actions taken in the preceding 12 months to limit, suspend, or terminate the participation of a school or lender in the agency's program; and

(vi) The steps the agency has taken to ensure its compliance with § 682.410(c) (2) through (6), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

(4) Any other information concerning the loan insurance program, at such frequency as determined by the Secretary.

(c) *Inspection requirements.* (1) A guarantee agency shall give the Secretary or the Secretary's designee access to its records in order to verify the correctness of the reports described in paragraph (b) of this section, or the right of the agency to receive or retain payments made by the Secretary under this part.

(2) A guarantee agency shall require in its agreement with a lender, or in its published rules or procedures, that the lender, or its agent, give the Secretary or the Secretary's designee and the guarantee agency access to the lender's records in order to verify the accuracy of the information provided by the lender pursuant to § 682.401(b) (12) and (13), and the right of the lender to receive or retain payments made under this part.

(Reporting and recordkeeping requirements contained in paragraphs (a)(3) and (b)(2) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1087-1)

Subpart E—Federal Insured Student Loan Program and Federal PLUS Program

SOURCE: 51 FR 40913, Nov. 10, 1986, unless otherwise noted.

§ 682.500 Circumstances under which loans may be guaranteed by the Secretary.

(a) The Secretary may guarantee all—

(1) FISLP and Federal PLUS Program loans made by lenders located in a State in which no State or private nonprofit guarantee agency has in effect an agreement with the Secretary under § 682.401 to serve as guarantor in that State;

(2) Federal PLUS Program loans made by lenders in a State in which a State or private nonprofit guarantee agency has in effect an agreement with the Secretary under § 682.401 but does not provide a loan guarantee program for PLUS borrowers; and

(3) FISLP loans made by lenders located in a State in which a guarantee agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Secretary may guarantee FISLP loans made by a lender located in a State where a guarantee agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only for—

(1) A student who does not meet the agency's residency requirements;

(2) A lender who is not able to obtain a guarantee from the guarantee agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements;

(3) With the approval of the guarantee agency, a student who has previously received from the same lender a FISLP loan that has not been repaid; or

(4) All students at a school located in the State, if the Secretary finds that—

(i) No single guarantee agency program is reasonably accessible to students at that school, as compared to students at other schools during a comparable period of time; and

(ii) Guaranteeing loans made in the State to students attending that school would significantly increase the access of students at that school to GSLP loans. The Secretary may guarantee loans made to those students by a lender in that State if—

(A) The guarantee agency does not recognize the school as being eligible, but the school is eligible under the FISLP; or

(B) A majority of the persons enrolled at the school meet the conditions of student eligibility for FISLP loans, but are not recognized as eligible under the guarantee agency program.

(c) For purposes of paragraph (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has a relationship with the school such that the school will be considered to have originated loans made to students at that school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for guaranteeing loans under the FISLP, the Secretary may require the lender to submit evidence of circumstances that would justify loan guarantees under the provisions of this section.

(e) With regard to a school lender which has entered into an agreement with the Secretary under § 682.601, the Secretary denies loan guarantees on the basis of this section only if the Secretary first determines that all eligible students at that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys which the Secretary considers satisfactory.

(Authority: 20 U.S.C. 1071, 1073, 1078-2, 1082)

§ 682.501 Extent of Federal guarantee under the FISLP and the Federal PLUS Program.

(a) *General.* Except as provided in paragraph (b) of this section, the Secretary's guarantee liability on any FISLP loan or Federal PLUS Program loan is 100 percent of the unpaid principal balance and, to the extent permitted under § 682.512, accrued interest.

(b) *Special provisions for State lenders.* (1) Except as described in paragraph (b)(2) of this section, the Secretary's guarantee liability is less than 100 percent under the following conditions:

(i) When the total of default claims under the FISLP and the Federal PLUS Program paid by the Secretary to a State lender during any fiscal year reaches five percent of the amount of the FISLP and Federal PLUS Program loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) When the total of default claims under the FISLP and the Federal PLUS Program paid by the Secretary to a State lender during any fiscal year reaches nine percent of the amount of the FISLP and Federal PLUS Program loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 80 percent of the amount of the unpaid principal balance plus accrued interest.

(iii) For purposes of this paragraph, the total default claims paid by the Secretary during any fiscal year does not include paid claims filed by the lender under the provisions of § 682.208(d) or § 682.509.

(2) The potential reduction in guarantee liability does not apply to a State lender during the first Federal fiscal year of its operation as a lender under either the FISLP or the Federal PLUS Program, and during each of the four succeeding fiscal years.

(3) For the purposes of this section, the term "amount of the FISLP and Federal PLUS Program loans in repayment" means the original principal amount of all FISLP and Federal PLUS Program loans guaranteed by the Secretary less—

(i) The original principal amount of loans on which—

(A) Under the FISLP, the borrower has not yet reached the repayment period;

(B) Payment in full has been made by the borrower; or

(C) The borrower was in deferment status at the time repayment of principal was scheduled to begin, and remains in deferment status; and

(ii) The amount paid by the Secretary for default claims on loans, exclusive of paid claims filed by the lender under § 682.208(d) or § 682.509.

(4) For the purposes of this paragraph, payments by the Secretary on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(5) State lenders shall consolidate FISLP and Federal PLUS Program loans for the purpose of calculating the amount of the Secretary's guarantee liability under this section.

(Authority: 20 U.S.C. 1075, 1078-2, 1082)

§ 682.502 The application to be a lender.

(a) In order to be considered for participation in the FISLP and the Federal PLUS Program, a lender must submit an application to the Secretary.

(b) In determining whether to enter into a guarantee contract with an applicant, and, if so, what the terms of the contract will be, the Secretary considers—

(1) Whether the applicant meets the definition of an "eligible lender" in section 435(g)(1) of the Act and the definition of "lender" in § 682.200;

(2) Whether the applicant is capable of complying with the regulations in this part as they apply to lenders;

(3) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting loans;

(4) Whether the applicant has had prior experience with a similar Federal, State, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(5) The financial resources of the applicant; and

(6) In the case of a school that is seeking approval as a lender, its ac-

creditation status (with the preferred condition being accredited).

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may fairly evaluate it in accordance with the criteria in this section.

(d) Denial of participation: (1) If the Secretary decides not to approve the application for an insurance contract, the reason for the decision is included in the Secretary's response.

(2) The Secretary provides an opportunity for the lender to meet with a designated Department official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial, or grant the lender an opportunity to appeal, if the lender submits its application within 6 months of a previous denial.

(Authority: 20 U.S.C. 1078-2, 1079, 1082)

§ 682.503 The guarantee contract.

(a)(1) To participate in the FISLP and Federal PLUS Program, a lender must hold a guarantee contract with the Secretary. No loan is guaranteed unless it is covered by such an agreement.

(2) In general, under a guarantee contract, the lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender in the FISLP and the Federal PLUS Program. In return the Secretary agrees to guarantee each eligible FISLP and Federal PLUS Program loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary may include in a contract a limit on the duration of the contract and the number or amount of FISLP or Federal PLUS Program loans the lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, a guarantee contract with a school lender limits the FISLP and Federal PLUS Program loans made by that school lender that will be covered by the Federal guarantee to those loans made to students, or to parents borrowing on behalf of students, who are—

(i) In attendance at that school;

(ii) In attendance at other schools under the same ownership as that school; or

(iii) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for loan guarantees.

(2) A limit imposed under paragraph (b)(1) of this section on a school lender that makes loans to students, or to parents of students, in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees of those other schools, may be imposed on a school-by-school basis.

(Authority: 20 U.S.C. 1078-2, 1079, 1082)

§ 682.504 Issuance of Federal loan guarantees.

(a) A lender having a guarantee contract shall submit an application to the Secretary for a Federal loan guarantee on each intended loan that the lender determines to be eligible for a guarantee. The application must be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan can be guaranteed and the amount of the guarantee. No disbursement on a loan made prior to the Secretary's approval of that loan is covered by the guarantee.

(b) The Secretary issues a guarantee on a FISLP or Federal PLUS Program loan in reliance on the implied representations of the lender that all requirements for the initial eligibility of the loan for guarantee coverage have been met. As described in § 682.513, the continuance of the guarantee is conditioned upon compliance by all holders of the loan with the regulations in this part. The delegation of functions to a servicing agency or another party does not relieve the lender of its responsibilities in the making, servicing, and collecting of a FISLP or Federal PLUS Program loan.

(Authority: 20 U.S.C. 1078-2, 1079, 1082)

§ 682.505 Insurance premium.

(a) *General.* The Secretary charges the lender an insurance premium for each loan that is guaranteed.

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) *FISLP loans—insurance premium calculation.* (1) The insurance premium for FISLP loans is calculated by—

(i) Counting the number of months beginning with the month following the month in which each disbursement on the loan is to be made and ending 12 months after the borrower's anticipated graduation from the school for attendance at which the loan is sought;

(ii) Dividing one-fourth of one percent of the principal amount of the loan by 12; and

(iii) Multiplying the result obtained in paragraph (c)(1)(i) of this section by that obtained in paragraph (c)(1)(ii) of this section.

(2) In cases where the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month following the month that the disbursement is made.

(d) *PLUS loans—insurance premium calculation.* The insurance premium for a Federal PLUS Program loan is calculated by—

(1) Using the actual repayment period as a base;

(2) Amortizing the loan in monthly installments over the repayment period;

(3) Determining one-fourth of one percent of each monthly declining principal balance; and

(4) Totalling the monthly amounts derived in paragraph (d)(3) of this section.

(e) *Collection from lenders.* (1) The Secretary may bill the lender for the insurance premium or may require the lender to pay the insurance premium to the Secretary at the time of disbursement of the loan. At the Secretary's discretion, the Secretary may alternatively collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) The Secretary's guarantee on a loan ceases to be effective when the lender fails to pay the insurance premium within 60 days of the date payment is due. The Secretary may, however, excuse late payment of an insurance premium, and reinstate the guarantee coverage on a loan, if the Secretary is satisfied that—

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or

(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

(f) *Collection from borrowers.* The lender may pass along the cost of the insurance premium to the borrower. If it does so, the insurance premium must be deducted from each disbursement of the loan in an amount proportionate to that disbursement's contribution to the premium amount.

(g) *Refund provisions.* The insurance premium is not refundable by the Secretary, and need not be refunded by the lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition in bankruptcy.

(Authority: 20 U.S.C. 1077, 1078-2, 1079, 1082)

§ 682.506 Limitations on maximum loan amounts.

The Secretary does not guarantee a FISLP or Federal PLUS Program loan in an amount that would—

(a) Result in an annual loan amount in excess of the student's estimated cost of attendance for the academic period for which the loan is intended less the estimated financial assistance awarded for that period; or

(b) Result in an annual or aggregate loan amount in excess of the permissible annual and aggregate loan limits described in § 682.204.

(Authority: 20 U.S.C. 1075, 1076, 1078-2, 1082, 1089)

§ 682.507 Due diligence in collecting a loan.

(a) *General.* (1) A lender shall exercise due diligence in the collection of a loan with respect to both a borrower and an endorser. In order to exercise due diligence, a lender shall implement the procedures described in this section when a borrower fails to make an installment payment when due.

(2) If two borrowers are liable for repayment of a Federal PLUS Program loan as co-makers, the lender shall follow these procedures with respect to both borrowers.

(3) For purposes of this section, the borrower's delinquency begins on the day after the due date of an installment payment not paid when due, except that if the borrower entered the repayment period without the lender's knowledge, the delinquency begins 30 days after the day the lender discovers that the borrower has entered the repayment period.

(b) *Initial delinquency.* When a borrower is delinquent in making a payment, the lender shall remind the borrower within 15 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender shall attempt to contact the borrower at least six more times at regular intervals during the remainder of the six-month period that started on the due date of the delinquent payment.

(c) *Skip-tracing assistance.* (1) Whenever a lender does not know the borrower's current address, the lender shall promptly attempt to locate the borrower through normal commercial collection techniques, including contacting all individuals and entities named in the borrower's loan application. If these efforts are unsuccessful, the lender shall promptly attempt to learn the borrower's current address through use of the Department of Education's skip-tracing assistance.

(2) If the lender does not know the borrower's address when a borrower is first delinquent in making a payment, but subsequently obtains the borrower's address prior to the date on which the loan goes into default, the lender shall attempt to contact the borrower in accordance with paragraph (b) of this section, with the first contact occurring within 15 days of the date the lender obtained knowledge of the borrower's address, and shall attempt to contact the borrower at least once during each succeeding 30-day period until default.

(d) *Preclaims assistance.* When the borrower is 60 days delinquent in making a payment, the lender shall request preclaims assistance from the Department of Education. This preclaim assistance consists of sending a series of letters to the borrower, urging the borrower to contact the lender and begin or resume payments.

(e) *Final demand letter.* A lender shall send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender shall allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown.

(f) *Litigation.* (1) If a loan is in default and the lender determines that the borrower or an endorser has the ability to repay the loan, the lender may bring suit against the borrower or the endorser to recover the amount of the unpaid principal and interest together with reasonable attorneys' fees.

(2) Prior to bringing suit the lender shall—

(i) Obtain the Secretary's approval; and

(ii) Notify the borrower or endorser in writing that it has received the Secretary's approval to bring suit on the loan, and that, unless the borrower or endorser makes payments sufficient to bring the account out of default, the lender will seek a judgment under which the borrower or endorser will be liable for payment of reasonable attorneys' fees and court costs in addition to the unpaid principal and interest on the loan. The lender shall mail the notice to the borrower or endorser by certified mail, return receipt requested.

(3) The lender may bring suit if the borrower or endorser does not make payments sufficient to bring the account out of default within 10 days following the date of delivery of the notice described in paragraph (f)(2)(ii)

of this section to the borrower or endorser indicated on the receipt.

(4) A lender may first apply the proceeds of any judgment against its reasonable attorneys' fees and court costs, whether or not the judgment provides for these fees and costs.

(Approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078-2, 1079, 1080, 1081, 1082, 1085)

§ 682.508 Assignment of a loan.

(a) *General.* A FISLP or Federal PLUS Program note may not be assigned except to another eligible lender. In this section, "seller" means any kind of assignor, "buyer" means any kind of assignee, and "assignment" means any kind of transfer, including assignment as security.

(b) *Procedure.* (1) A note assigned from one lender to another must be made subject to a blanket endorsement together with other notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the note must be signed and dated by an authorized official of the seller.

(2) The buyer shall—

(i) Notify the Secretary of the assignment if the right to receive special allowance has been assigned; and

(ii) Ensure that the borrower is notified promptly if the assignment results in the borrower being required to make installment payments, or to direct other matters connected with the loan, to a party other than the party with whom the borrower dealt before the assignment. The buyer shall include in the notice to the borrower a clear statement of all the borrower's rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller or any prior holder of the loan, subsequent to receipt of the notice.

(c) *Risks assumed by the buyer.* (1) General rules: Upon acquiring a note, a new holder assumes responsibility for the consequences of any previous violation of applicable statutes or regulations or the terms of the note. Neither a FISLP note nor a Federal PLUS Program note is a negotiable instrument, and a subsequent holder of such a note is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the original holder, the borrower can also assert the defense against the new holder. If the new holder files a default claim on a loan, the Secretary denies the default claim if there was a legal defect affecting the initial validity or guarantee eligibility of the loan and to the extent of the borrower's legal defenses. When a new holder files a claim on a loan, it shall provide the Secretary with the same documentation that would be required of the original lender.

(2) Special additional rules for assignment of loans made or originated by a school: The buyer of a loan is not entitled to rely on statements made by a school that made or originated that loan. In addition, the Secretary considers any unpaid tuition refund that was due to the student under § 682.606, before the first assignment of a loan that was made or originated by a school, as having been paid to the subsequent holder on the borrower's behalf.

(d) *The Secretary's approval.* The approval of the Secretary is required prior to the assignment of a note to an eligible lender that has not entered into a contract of insurance with the Secretary under § 682.503.

(e) *Trustee responsibility.* A lender to whom a loan is assigned in its capacity as a trustee assumes responsibility for complying with all applicable statutory and regulatory requirements imposed on any other holder of a loan.

(f) *Warranty.* (1) Nothing in this section precludes the buyer of a loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of guaranteed loss, if any, on a claim filed on the loan.

(2) The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters the buyer is responsible for under the regulations in this part.

(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078-2, 1079, 1080, 1082)

§ 682.509 Special conditions for filing a claim.

(a) A lender shall cease collection activity on a loan and file a claim with the Secretary within the time specified in § 682.511(e)(3), when—

(1) The lender learns that the school, in which the student on whose behalf the loan was made was enrolled, terminated its teaching activities involving that student during the academic period covered by the loan; or

(2) The Secretary directs that the claim be filed.

(b) A lender may not, as a result of a claim filed with the Secretary under this section, make a report to any credit bureau or other third party concerning the borrower's failure to repay the loan.

(Authority: 20 U.S.C. 1078-2, 1080, 1082)

§ 682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.

(a) The procedures in § 682.402 (a) through (d) for determining whether a borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, apply to the FISLP and Federal PLUS Program.

(b) References to the "guarantee agency" in § 682.402 (b)(2) and (d)(4) mean the Secretary.

(Authority: 20 U.S.C. 1078-2, 1082, 1087)

§ 682.511 Procedures for filing a claim.

(a) *Filing a claim application.* (1) A lender may file a claim against the Secretary's guarantee on a FISLP or Federal PLUS Program loan for any of the following reasons:

(i) The loan is in default, as defined in § 682.200.

(ii) Any of the conditions exist for filing a claim without collection efforts, as set forth in § 682.208(d) or § 682.509.

(iii) The borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, as determined by the lender in accordance with § 682.510.

(2) If a PLUS Program loan was obtained by two eligible parents as co-makers, the reason for filing a claim thereon must hold true for both parents.

(3) A lender may file a claim against the Secretary's guarantee only on a form provided by the Secretary. The lender must attach to the claim all documents required by the Secretary. If the lender fails to do so, the Secretary denies the claim.

(b) *Documentation required for claims.* (1) The Secretary requires a lender to submit the following documentation with all claims:

(i) The original promissory note.

(ii) The loan application.

(iii) The repayment instrument, in the case of a FISLP loan.

(iv) A payment history, as described in § 682.414(a)(3)(ii)(I), if any payments have been made.

(v) A collection history, as described in § 682.414(a)(3)(ii)(J).

(vi) A copy of the final demand letter, if required by § 682.507(e).

(vii) The original or a copy of all correspondence addressed to, from, or on behalf of the borrower that is relevant to the loan, whether that correspondence involved the original lender, a subsequent holder, or a servicing agent.

(viii) If applicable, evidence of the lender's requests to the Department of Education for skip-tracing assistance under § 682.507(c), and for preclaims assistance under § 682.507(d).

(ix) Any additional documentation that the Secretary deems relevant to a claim.

(2) The documentation requirements for death, total and permanent disability, or bankruptcy claims in § 682.402(e)(1) apply to the FISLP and the Federal PLUS Program. References to the "guarantee agency" in § 682.402(e)(1) mean the Secretary.

(c) *Assignment of note.* The Secretary's payment of a claim is contingent upon receipt from the lender of an assignment to the United States of America of all rights, title, and interest of the lender in the note underlying the claim. The lender shall also agree to reimburse the Secretary for any overpayments of interest benefits or special allowance that the Secretary may have made respecting the loan.

(d) *Bankruptcy subsequent to default.* If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of Education. Under these circumstances the lender shall not file a proof of claim with the bankruptcy court.

(e) *Claim filing deadlines.* To obtain payment of a claim, a lender shall comply with the following deadlines:

(1) *Default claims.* Unless the lender has already filed suit against the borrower in accordance with § 682.507(f), it shall file a default claim on a loan with the Secretary within 90 days after default. For a claim filed pursuant to § 682.208, the lender shall file a claim within 90 days following transmission of the final demand letter sent pursuant to § 682.412(d), if the borrower failed to comply with the terms thereof within 30 days of such transmission.

(2) *Death, total and permanent disability, or bankruptcy claims.* The claim filing deadlines in § 682.402(e)(2) apply to the FISLP and the Federal PLUS Program. References to the "guarantee agency" in § 682.402(e)(2) mean the Secretary.

(3) *Special condition claims.* In the case of a special condition claim filed pursuant to § 682.509, the lender shall file a claim with the Secretary within 90 days of the date the lender determines that the conditions set forth in § 682.509(a)(1) exist, or the date the Secretary directs that the claim be filed pursuant to § 682.509(a)(2).

(Approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1087)

§ 682.512 Determination of amount of loss on a claim.

(a) *Default claims*—(1) *Amount of loss.* The amount of loss to be paid on a default claim depends upon the date the Secretary received the application for a guarantee commitment on the loan. If the application was received—

(i) Prior to July 1, 1972, or from August 19, 1972 through February 28, 1973, the amount of loss to be paid on a valid claim is equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) From July 1 through August 18, 1972, or after February 28, 1973, the amount of the loss to be paid on a valid claim is equal to the unpaid balance of the principal and interest in accordance with paragraph (a)(2) of this section. The unpaid principal amount of the loan may include capitalized interest to the extent authorized by § 682.202.

(2) *Payment of interest.* If the guarantee covers unpaid interest, the payment of a valid claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in § 682.511(e) for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(iii) During the period, after the claim is filed, which is required by the Secretary to approve the claim and to authorize payment.

(b) *Death, total and permanent disability or bankruptcy claims.* (1) In the case of a death or disability claim, the amount of loss to be paid on a valid claim—

(i) Is equal to the unpaid balance of the original principal loan amount disbursed, if the loan was disbursed prior to December 15, 1968; or

(ii) Is calculated in accordance with § 682.402 (f)(2) and (f)(3) if the loan was disbursed after December 14, 1968.

(2) In the case of a bankruptcy claim, the amount of loss is calculated in accordance with § 682.402 (f)(2) and (f)(3).

(3) In § 682.402(f)(3) the "guarantee agency" means the Secretary.

(c) *Special rules for a loan acquired by assignment.* Except as provided in paragraph (d)(2) of this section, if a

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claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. For example, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(d) *Special rules for loans made by a school lender.* (1) If the loan for which a claim is filed was made by a school and the claim is filed by the school, the Secretary deducts from the claim—

(i) An amount equal to any unpaid refund that the school owes the student to whom or on whose behalf the loan was made under § 682.606; or

(ii) An amount which bears the same ratio to the total amount of the claim as the amount of educational services that the student was unable to complete, because the school terminated its teaching activities during the period for which the loan was obtained, bears to the total educational services which the student would have received, during the period for which the loan was obtained, had the school not terminated its teaching activity.

(2) If the loan for which a claim is filed was originally made by a school, but the claim is filed by another lender that obtained the note by assignment, the Secretary deducts from the claim the amount determined—

(i) Under paragraph (d)(1)(i) of this section that was due the student prior to the assignment of the loan; or

(ii) Under paragraph (d)(1)(ii) of this section.

(e) *Special rule for loans originated by a school.* A loan that is originated by a school is treated, for purposes of paragraph (d) of this section, as if it were a loan made and still held by the school.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1087)

§ 682.513 Factors affecting coverage of a loan under the loan guarantee.

(a)(1) In determining whether to approve for payment a claim against the Secretary's guarantee, the Secretary considers matters affecting the enforceability of the loan obligation, and whether the loan was made and administered in accordance with the Act and applicable regulations.

(2) The Secretary deducts from a claim any amount that is not a legally enforceable obligation of the borrower, except to the extent that the defense of infancy applies.

(3) Except as provided in § 682.509 the Secretary does not pay a claim unless—

(i) All holders of the loan have complied with the requirements of this part, including, but not limited to, those concerning due diligence in the making, servicing, and collecting of a loan;

(ii) The current holder has complied with the deadlines for filing a claim established in § 682.511(e); and

(iii) The current holder complies with the requirements for submitting documents with a claim as established in § 682.511(b).

(b) Except as provided in § 682.509, the Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary or if it would not be payable as a default claim by the Secretary.

(c) The Secretary's determination of the amount of loss payable on a default claim under this part, once final, is conclusive and binding on the lender that filed the claim. (Note: A determination of the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.)

(Authority: 20 U.S.C. 1078-2, 1079, 1080, 1082)

§ 682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for FISLP or Federal PLUS Program loans.

(a) The Secretary may waive the right to recover or refuse to make an interest benefits, special allowance, or claim payment, or may permit a lender to cure certain defects in a specified manner if, in the Secretary's judgment, the best interests of the United States so require.

(b) To receive payment on a default claim or to resume eligibility to receive interest benefits and special allowance on a loan as to which a lender has committed a violation of the requirements of this part regarding due diligence in collection or timely filing of claims, the lender shall meet the conditions described in Appendix C to this part.

(Authority: 20 U.S.C. 1078-2, 1080, 1082)

§ 682.515 Records, reports, and inspection requirements for FISLP and Federal PLUS Program lenders.

(a) *Records.* (1) A lender shall keep complete and accurate records of each loan that it holds, including but not limited to the records described in § 682.414(a)(3)(ii). The records must be organized in such a way as to permit ready identification of the current status of each loan.

(2) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(3)(i) The lender may store the records specified in § 682.414(a)(3)(ii)(C) through (K) on microfilm or computer format.

(ii) The holder of the promissory note shall retain the original note and repayment instrument until the loan is fully repaid. At that time the lender shall return the original note and repayment instrument to the borrower, and retain copies for the prescribed period.

(iii) The lender shall retain the original or a copy of the loan application.

(b) *Reports.* A lender shall submit reports to the Secretary at the time and in the manner that the Secretary may reasonably require.

(c) *Inspections.* Upon request, a lender or its agent shall afford the Secretary, the Comptroller General of the United States, and any of their authorized representatives, access to its records in order to verify the accuracy of its reports or the lender's compliance with the Act and applicable regulations.

(Reporting and recordkeeping requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1077, 1078, 1078-2, 1079, 1080, 1082)

Subpart F—Requirements, Standards, and Payments for Participating Schools

Source: 51 FR 40919, Nov. 10, 1986, unless otherwise noted.

§ 682.600 Agreement between an eligible school and the Secretary for participation in the Guaranteed Student Loan and PLUS Programs.

(a) *General.* Participation of a school in the GSLP and the PLUS Program means that the school's students are eligible to receive GSLP and PLUS Program loans. To participate in the GSLP and the PLUS Program under either the FISLP, the Federal PLUS Program, or a guarantee agency program, a school shall—

(1) Establish its basic eligibility as an institution of higher education or a vocational school as defined in 34 CFR Part 668 through certification by the Secretary; and

(2) Enter into a written program participation agreement with the Secretary that is signed by an appropriate official of the school on a form approved by the Secretary.

(b) *Program participation agreement.* The school, in the program participation agreement, promises to comply with the applicable provisions of—

(1) The Act and the regulations in this part; and

(2) The Student Assistance General Provisions, 34 CFR Part 668.

(c) *Appeal of denial or limitations.* (1) If the Secretary denies a request for an agreement or approves only limited participation in the GSLP or the PLUS Program by a school—

(i) The reason for the decision is included in the Secretary's response to the request; and

(ii) The Secretary provides an opportunity for the school to meet with a designated Department official to appeal that decision.

(2) The Secretary does not, however, grant an opportunity for appeal, or give reasons for denying the participation or approving only the limited participation of a school, if the school submits its request within six months of a previous denial or limited approval.

(d) *Foreign schools.* A foreign school is required to comply with the provisions of the regulations in this part only to the extent determined by the Secretary.

(Authority: 20 U.S.C. 1078-2, 1082, 1094)

§ 682.601 Agreement between the Secretary and a school that makes or originates loans.

(a) *General.* A school must have an agreement with the Secretary in order to make or originate loans under either the GSLP or the PLUS Program.

(b) *Contents of the agreement.* An agreement to allow a school either to make or to originate loans must contain the following terms:

(1) The school will not make or originate loans which would be outstanding to or on behalf of more than 50 percent of its undergraduates in attendance at that school on at least a half-time basis, unless the Secretary waives this rule pursuant to paragraph (d) of this section.

(2) The school will inform any undergraduate student, who has not previously obtained a loan that was made or originated by the school and who seeks to obtain that loan, that he or she must first make a good faith effort to obtain a loan from a commercial lender.

(3)(i) The school will not make or originate a loan for an academic period to a student described in paragraph (b)(2) of this section until the student provides the school with evidence under paragraph (c) of this section of denial of a loan by a commercial lender for the same academic period.

(ii) In determining whether a school has complied with the requirement set forth in paragraph (b)(3)(i) of this section, the Secretary may take into consideration any patterns reflected by the letters of denial or the students' sworn statements referred to in paragraph (c) of this section that indicate that the school has not given sufficient counseling to students to seek loans from a commercial lender first. An example of an unacceptable pattern would be if all denials of loans to a school's students were made by a small number of lenders.

(4) The school will not make or originate a loan for an academic year in excess of the lesser of $2,500 or half the estimated cost of attendance to a student who—

(i) Is in the first academic year of study as an undergraduate; and

(ii) Was not previously enrolled in an undergraduate program.

(c) *Establishing a loan denial by a commercial lender.* (1) To verify that a borrower has sought and been denied a loan from a commercial lender, pursuant to paragraph (b)(3) of this section, the school shall obtain from the borrower—

(i) A written statement from a commercial lender indicating that the lender denied the borrower a loan for that academic period; or

(ii) The borrower's sworn statement, indicating both the refusal of a loan by a commercial lender and the lender's refusal to provide a written statement of the denial.

(2) If the borrower's statement is used to establish the denial of a loan, the statement must include—

(i) The name and address of the lender that denied the loan;

(ii) The approximate date on which the loan was denied;

(iii) The name and telephone number of the official who communicated the denial to the borrower; and

(iv) The borrower's signature.

(3) If the school determines that the denial of a loan to an eligible borrower by a commercial lender is based upon the lender's refusal to lend more than a part of the amount requested by the borrower, the school may either—

(i) Make or originate a loan to the borrower for the entire amount; or

(ii) Supplement the loan that the commercial lender is willing to make with a second loan to the borrower.

(d) *Waiver of the 50 percent lending limit.* A school may request the Secretary to waive the 50 percent lending limit described in paragraph (b)(1) of this section if adherence to that limit would create a substantial hardship for the school's present or prospective students. The Secretary determines whether to grant the school a waiver after considering—

(1) The extent to which the school provides, and expects to continue providing, educational opportunities to economically disadvantaged students, as measured by the percentage of those students enrolled at the school who—

(i) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll, or continue their enrollment, at that school without GSLP or PLUS Program loans made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school;

(2) The extent to which the school offers academic programs that—

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit; and

(3) The quality of the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(Reporting and recordkeeping requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1075, 1078, 1078-2, 1082, 1083)

§ 682.602 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students, which must be given to a prospective student prior to that student's enrollment.

(b) The school shall include in its schedule—

(1) The number of lessons in the course;

(2) The intervals at which lessons are to be submitted;

(3) The date by which the course is to be completed; and

(4) The period of time within which any resident training must be completed.

(c) The school's schedule must conform to the requirements set forth in paragraph (b) of the definition of "vocational school" in 34 CFR 668.4.

(Reporting and recordkeeping requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078-2, 1082)

§ 682.603 Certification by a participating school in connection with a loan application.

(a) A school shall certify that the information it provides in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR Part 668 Subpart E, a school may rely in good faith upon statements made on the application by the student.

(b) The information to be provided by the school about the borrower making application for the loan pertains to—

(1) The borrower's eligibility for a loan as determined in accordance with § 682.201;

(2) The student's estimated cost of attendance for the period for which the loan is sought;

(3) The student's estimated financial assistance for the period for which the loan is sought; and

(4) For a GSLP loan, the student's eligibility for interest benefits, as determined in accordance with § 682.301

(c) Beginning not later than 60 days after a school receives notice from the Secretary that its fiscal year default rate, as defined in 34 CFR Part 668, exceeded 30 percent for any fiscal year after fiscal year 1986, and continuing until the school is notified by the Secretary that its rate was equal to or less than 30 percent for a subsequent fiscal year, a school shall delay certification of the loan application of any student applying for his or her first GSL or SLS loan for attendance at the school, so that, in compliance with § 682.604, the school ensures that the student's endorsement of the check for (or written approval for the release of funds disbursed by electronic funds transfer representing) the first disbursement of the loan, the delivery of any loan proceeds to such a borrower, and the crediting of any proceeds to the borrower's account, do not occur until the borrower has attended the institution for at least 30 days during the period of enrollment for which the loan was made.

(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1085, 1094)

[51 FR 40919, Nov. 10, 1986, as amended at 54 FR 24120, June 5, 1989]

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

(a) *Purpose.* This section establishes rules governing a school's processing of a borrower's loan proceeds. The school shall also comply with any rules for processing a loan contained in 34 CFR Part 668.

(b) *General.* (1) Except in the case of a PLUS Program loan to a parent borrower, GSLP or PLUS Program loan proceeds are sent directly to the school by the lender.

(2) Except in the case of a late disbursement under paragraph (e) of this section, a school may release the proceeds of a loan made under this part only to a student who the school determines, after it receives the proceeds of the loan from the lender, has maintained eligibility in accordance with the provisions of § 682.201.

(c) *Processing of the loan proceeds by the school.* (1) Except as provided in paragraph (d)(3) of this section, when a school receives a borrower's loan proceeds, it shall hold the funds until the student has registered for classes for the period of enrollment for which the loan is intended, and then follow the procedures in paragraph (c)(2) of this section.

(2)(i) After the student has registered, if the loan proceeds are disbursed by means of a check which requires the endorsement only of the student, the school shall promptly deliver the check to the student in accordance with paragraph (d)(2) of this section.

(ii) If the loan proceeds are disbursed by means of a check which requires the endorsement of both the student and the school, the school shall—

(A) Endorse the check on its own behalf and, after the student has registered, promptly deliver it to the student in accordance with paragraph (d)(2) of this section; or

(B) Obtain the student's endorsement on the check, endorse the check on its own behalf and, after the student has registered, credit the student's account, in accordance with paragraph (d)(1) of this section, and deliver the remaining loan proceeds to the student in accordance with paragraph (d)(2) of this section.

(3) If the loan proceeds are disbursed by electronic transfer to an account of the school on behalf of a borrower in accordance with § 682.207(b)(1)(ii)(B), the school shall, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended, obtain the student's written authorization for the release of the funds, and, after the student has registered, either—

(i) Deliver the proceeds to the student in accordance with paragraph (d)(1) of this section; or

(ii) Credit the student's account in accordance with paragraph (d)(1) of this section and deliver the remaining loan proceeds to the student in accordance with paragraph (d)(2) of this section.

(4) A school may not release the proceeds of a loan made under this part to a borrower for whom a financial aid transcript is required under 34 CFR Part 668 and has not been received, except as permitted by Part 668. If a required financial aid transcript has not been received for a borrower for whom the school has received the proceeds of a GSLP or PLUS Program loan within 45 days of that receipt, and release of the proceeds to the borrower is therefore prohibited by 34 CFR Part 668, the school shall immediately return the loan proceeds to the lender.

(d) *Applying the loan proceeds.* (1)(i) For purposes of paragraphs (c)(2)(ii)(B) and (c)(3)(ii) of this section, the earliest an institution may credit a registered student's account is three weeks before the first day of classes of the period of enrollment for which the loan is intended.

(ii) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed, and any additional loan proceeds that the student requests in writing that the school retain in order to assist the student in managing his or her loan funds for the remainder of the academic year.

(2) For purposes of paragraphs (c)(2)(i), (c)(2)(ii)(A), and (c)(3) of this section, the earliest an institution may deliver loan proceeds to a registered student is 10 days before the first day of classes of the period of enrollment for which the loan is intended.

(3) If the school determines that the student has not registered, the school shall return the loan proceeds to the lender within 30 days of this determination.

(4) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is intended, or if the school is unable to document that the student attended class during that period, the school shall return to the lender—

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) Any loan proceeds delivered to the student and subsequently paid by the student to the school.

(e) *Processing a late disbursement.* (1) For the purpose of this paragraph, a disbursement is late if the school receives the student's loan proceeds from the lender either—

(i) After the end of the period of attendance for which the loan was made (*i.e.*, after the expiration date of the guarantee commitment); or

(ii) Before the end of the academic period for which the loan was made, but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) If a late disbursement is accompanied by a notice from the lender that the late disbursement has been approved by the guarantor under § 682.207(d), the school shall follow the procedure described in paragraph (c)(2) of this section.

(3) If a late disbursement is not accompanied by the notice described in paragraph (e)(2) of this section, the school shall—

(i) Return the loan proceeds to the lender within 30 days of its determination that one of the conditions described in paragraph (e)(1) of this section exists;

(ii) Send with the loan proceeds—

(A) A notice that one of the conditions described in paragraph (e)(1) of this section exists; and

(B) If applicable, information concerning the student's date of withdrawal and costs of attendance owed the school for the period in which the student was enrolled on at least a half-time basis; and

(iii) Advise the student that the lender may, in accordance with the procedures in § 682.207(c), redisburse funds for the student's costs of attendance incurred before the existence of one of the conditions described in paragraph (e)(1) of this section.

(f) *Initial counseling.* (1) Except in the case of a correspondence school, a school shall conduct counseling with each GSL and SLS borrower, either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to its release of the first disbursement of the proceeds of the first GSL or SLS loan made to the borrower for attendance at the school, and shall ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. A correspondence school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iii) In the case of a student borrower of a GSL or SLS program loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in Appendix D to 34 CFR Part 668.

(g) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each GSL and SLS borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge, or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling the school must—

(i) Provide the borrower with general information with respect to the average indebtedness of the students who have obtained GSL or SLS program loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (*e.g.*, loan consolidation, refinancing);

(iv) Suggest to the borrower debt management strategies that the school determines would best facilitate repayment by the borrower; and

(v) Include the matters described in paragraph (f)(2) of this section.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in Appendix D to Part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f)-(g) of this section as to that borrower.

(Approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1082, 1085, 1092, 1094)

[51 FR 40919, Nov. 10, 1986, as amended at 54 FR 24120, June 5, 1989; 54 FR 35189, Aug. 24, 1989]

§ 682.605 Determining the date of a student's withdrawal.

(a) Purpose. This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part, for the purpose of reporting to the lender the date that the student has withdrawn from the school and for determining when a refund must be paid under § 682.607 of this part.

(b) *The withdrawal date.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal, or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal, as determined by the school.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the date of the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is normally 60 days after the due date of a required lesson that the student failed

to submit in accordance with the schedule for lessons established under § 682.602. However, if the student establishes in writing, within the 60-day period, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school shall not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month and year of the withdrawal date determined under paragraphs (b)(1) through (b)(3) of this section.

(c) *Leaves of absence.* A student who has been absent from school and has been granted a leave of absence by a school, in accordance with this paragraph, is not considered to have withdrawn from school for purposes of this section. In any twelve-month period, a school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) Sixty days; or

(ii) Six months, under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1078-2, 1082, 1094)

[51 FR 40919, Nov. 10, 1986, as amended at 54 FR 24121, June 5, 1989]

§ 682.606 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, room and board and other charges, to a student who received a GSL or SLS Program loan, or whose parent received a PLUS Program loan on behalf of the student, if the student—

(i) Does not register for the period of attendance for which the loan was intended; or

(ii) Withdraws or otherwise fails to complete the period of enrollment for which the loan was made.

(2) The school shall provide a written statement containing its refund policy, together with examples of the application of this policy, to a prospective student prior to the student's enrollment, and shall make its policy known to currently enrolled students. The school shall include in its statement the procedures that a student must follow to obtain a refund, but the school shall pay to the lender the portion of a refund allocable to the student's GSL, SLS, or PLUS program loans under 34 CFR Part 668 whether or not the student follows those procedures. If the school changes its refund policy, it shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if—

(1) That policy provides for a refund of at least the larger of the amount provided under—

(i) The requirements of applicable State law; or

(ii)(A) The specific refund standards established by the school's nationally recognized accrediting agency and approved by the Secretary; or

(B) If no such standards exist, the specific refund policy standards contained in Appendix A to this part, or the refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary; and

(2) Within 60 days after the school's receipt of notice from the Secretary that its fiscal year default rate, as defined in 34 CFR Part 668, exceeded 30 percent for any fiscal year after 1986,

and continuing until the Secretary notifies the school that its rate was equal to or less than 30 percent for a subsequent fiscal year, the school's policy conforms with the *pro rata* refund calculation described in paragraph (c) of this section or the requirements of paragraph (b)(1) of this section, whichever results in the larger refund amount. However, the provisions of paragraph (b)(2) of this section do not apply to the school's refund policy for any student whose last recorded day of attendance is after the earlier of—

(i) The halfway point (in time) for the student's program of study; or

(ii) Six months after the commencement of the student's program.

(c)(1) "*Pro rata* refund," as used in this section, means a refund by the school of not less than that portion of the tuition, fees, room and board, and other charges assessed the student by the school equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded downward to the nearest 10 percent of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, and less—

(i) A reasonable administrative fee not to exceed the lesser of 5 percent of the tuition, fees, room and board, and other charges assessed the student, or $100; and

(ii) Charges authorized by paragraph (c)(5) of this section.

(2) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in credit hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of weeks comprising the period of enrollment for which the student has been charged into the number of weeks remaining in that period as of the last recorded day of attendance by the student.

(3) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in clock hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student.

(4) For purposes of paragraph (c)(1) of this section, in the case of a correspondence program, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of such lessons not submitted by the student.

(5) A school may require that equipment issued to the student by the school that the school would reissue to another student be returned by a student once the school determines that the borrower has withdrawn, if the school makes a written request for that return that is received by the student within 10 days of the date of that determination. If the school notified the student in writing prior to enrollment that return of the specific equipment involved would be required if the student withdrew, the school may deduct from the refund owed under this section the documented cost to the school of that equipment if the student fails to return it within 10 days of the date of the student's receipt of the request from the school. However, the school may not delay its payment of a refund to a lender under § 682.607 by reason of this process.

(Approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1094)

[54 FR 24121, June 5, 1989, as amended at 54 FR 35189, Aug. 24, 1989; 54 FR 37267, Sept. 7, 1989; 54 FR 43811, Oct. 27, 1989]

§ 682.607 Payment of a refund to a lender.

(a) *General.* By applying for a GSLP or PLUS Program loan, a borrower authorizes the school to pay directly to the lender that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to a GSLP or PLUS Program loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Shall provide simultaneous written notice to the borrower and, if the borrower is a parent, to the student on whose behalf the loan was made, when the school pays a refund to a lender on behalf of that student.

(b) *Allocation of refund.* In determining what portion of a student's refund for an academic period is allocable to a loan received by the borrower for the same academic period, the school shall follow the procedures established in 34 CFR Part 668.

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days after the earliest of the—

(i) Student's withdrawal as determined under § 682.605 (b)(1)(i) or (b)(3);

(ii) Expiration of the academic term (*e.g.*, semester, quarter, or trimester) in which the student withdrew, as determined under § 682.605(b)(1)(ii);

(iii) Expiration of the period of enrollment for which the loan was made; or

(iv) The date on which the school makes a determination that the student has withdrawn under § 682.605(b)(1)(ii); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 682.605(c), within 30 days after the last day of that leave of absence.

(d) *Transition requirements.* In the event of a school's closure, termination, suspension of operations, or change in ownership, the school or its successors shall make provisions for compliance with the requirements of this section with regard to students who obtained, or on whose behalf parents obtained, loans for periods of attendance at the school that began prior to the school's change in status.

(Authority: 20 U.S.C. 1078-2, 1082, 1094)

[51 FR 40919, Nov. 10, 1986, as amended at 54 FR 24122, June 5, 1989; 54 FR 43811, Oct. 27, 1989]

§ 682.608 Termination of a school's lending eligibility.

(a) *General.* The Secretary terminates a school's eligibility to make loans under this part, if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Secretary terminates a school's eligibility to make loans if, at the end of each of the two most recent consecutive fiscal years for which data are available, the total amount of loans described in paragraph (b)(1)(i) of this section is equal to or greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section:

(i) The original principal amount of all loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination under this section, the Secretary considers the status of all GSLP and PLUS Program loans made by the school, whether the loans are held by the school or by a subsequent holder.

(c) *Exception based on hardship.* The Secretary does not terminate a school's lending eligibility under paragraphs (a) and (b) of this section if the Secretary determines that the termination would result in a hardship for the school or its students. The Secretary makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will cause the school's loan delinquency rate to improve within the next year. Examples of these improvements include—

(i) Adopting more efficient collection procedures; or

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's cur-

rent or prospective students or their parents based on—

(i) The extent to which the school provides, and expects to continue to provide, educational opportunities to economically disadvantaged students, as measured by the percentage of students enrolled at the school who—

(A) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll, or continue their enrollment, at that school without a loan from the school; and

(C) Would not be able to obtain a comparable education at another school;

(ii) The extent to which the school offers academic programs that—

(A) Are unique in the geographical area that the school serves; and

(B) Would not be available to some students if they or their parents could not obtain loans from the school; and

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* (1) The Secretary does not terminate the lending eligibility of a school under this section until the school has been notified of the impending action and has had an opportunity for a hearing.

(2) The Secretary or a Department of Education official designated by the Secretary begins a termination action by sending a notice to the school. The notice is sent by certified mail with return receipt requested. The notice—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed effective date of the termination as the following October 1; and

(iii) Informs the school that it has 15 days to—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraphs (a) and (b) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request a hearing to show why the school's lending eligibility should not be terminated.

(3) If the school does not request a hearing but submits written material, the Secretary or the designated official considers that material and notifies the school as to whether the termination action will be taken.

(4) The Secretary or the designated official (presiding officer) schedules the date and place of a hearing for a school that has requested a hearing. The date of the hearing is at least 15 days from the date of receipt of the request. The presiding officer—

(i) Conducts the hearing;

(ii) Considers all written material presented before the hearing and any other material presented during the hearing; and

(iii) Determines if termination of the school's lending eligibility is warranted.

(5) The decision of the presiding officer, in the event that the school has submitted written material but has not requested a hearing, is subject to review by the Secretary.

(e) *Effects of termination.* A school that has its lending eligibility terminated under this section may not—

(1) Make further loans under this part unless it has entered into a new lending agreement with the Secretary under § 682.601; or

(2) Enter into a new guarantee agreement with the Secretary until at least one year after the school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes a loan to students or parents of students in attendance at other schools under the same ownership, the Secretary may make the determinations required by this section by—

(1) Treating all of the schools as one school; or

(2) Treating each school on an individual basis.

(Authority: 20 U.S.C. 1078-2, 1082, 1085)

§ 682.609 Remedial actions.

(a) The Secretary requires a school to repay to the Secretary funds paid by the Secretary to other program participants if the Secretary determines that the payment resulted, in whole or in part, from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) The Secretary's decision to require repayment of funds by a school, to withhold funds from a school, or to limit, suspend or terminate a school's GSL or PLUS Program participation, does not become final until the Secretary provides the school with written notice of the intended action and an opportunity to be heard. However, the Secretary may withhold payments from a school or suspend an agreement with a school prior to giving notice and an opportunity to be heard if the Secretary finds that emergency action necessary to prevent substantial harm to the Federal interest.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds by a school if, in the Secretary's judgment, the best interest of the United States so requires.

(d) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against a school under this section is conclusive and binding on the school. (Note: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.)

(Authority: 20 U.S.C. 1078-2, 1082, 1094)

§ 682.610 Records, repórts, and inspection requirements for participating schools.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR Part 668 in order to—

(i) Protect the rights of students and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with any specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR Part 668 to the Secretary.

(b) *Loan record requirements.* In addition to records required by 34 CFR Part 668, for each loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application and a record of—

(1) The name of the lender;

(2) The address of the lender;

(3) The amount of the loan and the period of attendance for which the loan was intended;

(4) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(5) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(6) In the case of a GSLP loan for which the borrower applies for interest benefits under § 682.301, the data used to determine the student's adjusted gross family income and the student's expected family contribution, and the corresponding certification by the school to the lender;

(7) In the case of a GSLP loan—

(i) The date the school received each loan disbursement and the amount of that disbursement;

(ii) The date the school endorsed each loan check; and

(iii) The date or dates of transmittal of the loan proceeds by the school to the student; and

(8) A record of the student's job placement, if known.

(c) *Student status reports.* A school shall—

(1) Upon receipt of a student confirmation report form from the Secretary or a similar status confirmation report form from any guarantee agency, complete and return, within 30 days of receipt, that report to the Secretary or the guarantee agency, as appropriate; and

(2) Promptly notify the lender—

(i) When the school discovers that a student who has received a GSLP loan has ceased to be enrolled on at least a half-time basis and it does not expect to submit, within the next 60 days, its next student confirmation report to the Secretary or the guarantee agency;

(ii) When the school discovers that a PLUS Program loan has been made to or on behalf of a student who has been accepted for enrollment at that school but who fails to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) When the school discovers that a full-time student to whom a PLUS Program loan was made has ceased to be enrolled on a full-time basis.

(d) *Record-retention requirements.* Unless otherwise directed by the Secretary, the school or its successors—

(1) Shall keep all records required under the regulations in this part for five years following the last day of the period for which the loan was intended;

(2) Shall keep for five years after their completion copies of reports and other forms used by the school relating to the GSLP or the PLUS Program;

(3) Shall provide, in the event of the school's closure, termination, suspension, or change of ownership, for the retention of the records and reports required by the regulations in this part and for access by the Secretary or his authorized representatives to those records and reports; and

(4) May keep records and copies of reports on microfilm or in computer format.

(e) *Inspection requirements.* Upon request, a school shall afford the Secretary, a guarantee agency, and any of their authorized representatives, access to its records in order to verify the accuracy of its reports or the school's compliance with the Act and applicable regulations.

(f) *Information sharing.* Upon request, a school shall promptly provide a lender or guarantee agency with any information it has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(g) *Reports to the Secretary.* With respect to each program for which a disclosure to a prospective student is required by 34 CFR 668.44 to be made using a form set forth in Appendix A. Part 668, a school shall, between October 1 and December 31 of each year, transmit to the Secretary—

(1) A completed copy of that form containing the most recent data required by Part 668 to be included on the form; and

(2) Information showing the total amount of charges for tuition, fees, equipment, books, and supplies for the program.

(Approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078-2, 1082, 1094)

[51 FR 40919, Nov. 10, 1986, as amended at 54 FR 24122, June 5, 1989; 54 FR 35189, Aug. 24, 1989]

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility Under the Guaranteed Student Loan Program and the PLUS Program

SOURCE: 51 FR 40923, Nov. 10, 1986, unless otherwise noted.

§ 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination of the eligibility of an otherwise eligible lender to participate in the GSLP and the PLUS Program. The regulations in this subpart apply to a lender that violates any statutory provision governing the GSLP or the PLUS Program or any regulations, special arrangements, agreements, or limitations prescribed under the GSLP or the PLUS Program. These regulations apply to lenders that participate in a guarantee agency program as well as lenders that participate in the FISLP or the Federal PLUS Program.

(b) This subpart does not apply—

(1) To a determination that an organization fails to meet the definition of "eligible lender" in section 435(g)(1) of the Act or the definition of "lender" in § 682.200;

(2) To a school's loss of lending eligibility under § 682.608; or

(3) To an administrative action by the Department of Education based on any alleged violation of—

(i) The Family Educational Rights and Privacy Act of 1974 (Section 438 of the General Education Provisions Act), which is governed by 34 CFR Part 99;

(ii) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR Parts 100 and 101;

(iii) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap), which is governed by 34 CFR Part 104; or

(iv) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR Part 106.

(c) This subpart does not supplant any rights or remedies that the Secretary may have against participating lenders under other authorities.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.701 Definitions of terms used in this subpart.

The following definitions are used in this subpart:

Designated Departmental official: An official of the Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing limitation, suspension, or termination proceedings.

Limitation: The continuation of a lender's eligibility subject to compliance with special conditions established by the Secretary as the result of a limitation or termination proceeding.

Suspension: The removal of a lender's eligibility for a specified period of time or until the lender fulfills certain requirements.

Termination: The removal of a lender's eligibility for an indefinite period of time.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.702 Effect on participation.

(a) Limitation, suspension, or termination proceedings do not affect a lender's responsibilities, or rights to benefits and claim payments, that are based on the lender's prior participation in the program, except as provided in paragraph (c) of this section and in § 682.709.

(b) Effect of limitation: A limitation imposes on a lender—

(1) A limit on the number of total amount of GSLP or PLUS Program loans that a lender may make, purchase, or hold;

(2) A limit on the number of total amount of GSLP or PLUS Program loans a lender may make to, or on behalf of, students at a particular school; or

(3) Other reasonable requirements or conditions, including those described in § 682.709.

(c) Effect of termination: After the effective date of the termination of a lender's eligibility, the Secretary does not guarantee new loans made by that lender or pay interest benefits, special allowance, or reinsurance on new loans guaranteed by a guarantee agency after that date. The Secretary may also prohibit the lender from making further disbursements on a loan for which a guarantee commitment has already been issued.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if the Secretary receives a complaint or other reliable information indicating that a lender may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) Under the informal compliance procedure, the Secretary gives the lender a reasonable opportunity to—

(1) Respond to the complaint or information; and

(2) Show that the violation has been corrected or submit an acceptable plan for correcting the violation and preventing its recurrence.

(c) The Secretary does not delay limitation, suspension, or termination procedures during the informal compliance procedure if—

(1) The delay would harm the GSLP or the PLUS Program; or

(2) The informal compliance procedure will not result in correction of the alleged violation.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.704 Emergency action.

(a) The Secretary, or a designated Departmental official, may take emergency action to stop the issuance of guarantee commitments and the payment of interest benefits and special allowance to a lender if the Secretary—

(1) Receives reliable information that the lender is in violation of applicable laws, regulations, special arrangements, agreements, or limitations;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, parents, or students; and

(3) Determines that the likelihood of loss exceeds the importance of following the procedures for limitation, suspension, or termination.

(b) The Secretary begins an emergency action by notifying the lender, by certified mail with return receipt requested, of the action and the basis for the action.

(c) The effective date of the action is the date the notice is mailed to the lender.

(d)(1) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that time expires.

(2) If a limitation, suspension, or termination proceeding is begun before the expiration of the 30-day period—

(i) The emergency action may be extended until completion of the proceeding, including any appeal to the Secretary; and

(ii) The Secretary provides, upon the request of the lender, an opportunity for the lender to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.705 Suspension proceedings.

(a) *Scope.* (1) A suspension removes a lender's eligibility under the GSLP and the PLUS Program, and the Secretary does not guarantee or reinsure a new loan made by the lender during a period not to exceed 60 days from the effective date of the suspension, unless—

(i) The lender and the Secretary agree to an extension of the suspension period, if the lender has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) *Notice.* (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to suspend the lender's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender that the suspension will not take effect on the proposed effective date if the Secretary receives, at least five days prior to that date, a request for a hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender to correct any alleged violations voluntarily.

(c) *Hearing.* (1) If the lender does not request a hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed suspension; or

(ii) Notifies the lender of the effective date of the suspension.

(2) If the lender requests a hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the

lender. No proposed suspension takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision, based on findings of fact and conclusions of law, that may suspend the lender's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) The initial decision of the presiding officer is mailed to the lender.

(7) The Secretary reviews the decision of the presiding officer. The Secretary affirms a decision of the presiding officer imposing a suspension unless it is clearly unsupported by the evidence. The Secretary affirms a decision declining to impose a suspension if the Secretary believes suspension is not warranted by the evidence. The Secretary notifies the lender of the Secretary's decision by mail.

(8) A suspension takes effect on either the date that the notice of a decision imposing the suspension is mailed to the lender, or on the original proposed effective date started in the notice sent under paragraph (b) of this section, whichever is later.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.706 Limitation or termination proceedings.

(a) *Notice.* (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether or not a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to limit or terminate the lender's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender that the limitation or termination will not take effect on the proposed effective date if the Secretary receives, at least five days prior to that date, a request for a hearing or written material showing why the limitation or termination should not take effect; and

(vii) Asks the lender to voluntarily correct any alleged violations.

(b) *Hearing.* (1) If the lender does not request a hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender of the effective date of the limitation or termination.

(2) If the lender requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence considered at the hearing and matters given official notice.

(6) If a termination action is brought against a lender, and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating the lender's eligibility.

(7) The initial decision of the presiding officer is mailed to the lender.

(8) Any time-schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender and the Secretary or designated Department official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued, unless the lender or designated Department official appeals the decision to the Secretary within this period.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender or designated Departmental official appeals the initial decision of the presiding officer in accordance with § 682.706(b)(9), the Secretary—

(1) Sets a time period for the appealing party to submit additional written material, including exceptions to the initial decision, proposed findings and conclusions, and supporting briefs and statements;

(2) Sets a time by which the opposing party must respond; and

(3) Issues a final decision affirming, modifying, or reversing the initial decision, including a statement of the reasons for the Secretary's decision.

(b) Any party submitting material to the Secretary must provide a copy to each party that participates in the hearing.

(c) If the presiding officer's initial decision would limit or terminate the lender's eligibility, it does not take effect pending the appeal, unless the Secretary determines that a stay of the effective date would seriously and adversely affect the GSLP, the PLUS Program, students, or parents.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart are evidenced by the original receipts from the U.S. Postal Service.

(b) If a lender refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender refuses to accept the notice.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender improperly received, withheld, disbursed, or caused to be disbursed.

(c) If a final decision requires a lender to reimburse or make any payment to the Secretary, the Secretary may offset the amount due against any interest benefits, special allowance, or other payments due to the lender.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.710 Removal of limitation.

(a) A lender may request removal of a limitation imposed in accordance with the regulations in this subpart at any time more than 12 months after the effective date of the limitation.

(b) The request must be in writing and must show that the lender has corrected any violations on which the limitation was based.

(c) Within 60 days after receiving the request, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d)(1) If the Secretary denies the request or establishes other limitations, the lender, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender may continue to participate in the GSLP and the PLUS Program, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

§ 682.711 Reinstatement after termination.

(a) A lender whose eligibility has been terminated by the Secretary in accordance with the regulations in this subpart may request reinstatement of its eligibility at any time more than 18 months after the effective date of the termination.

(b) The request must be in writing and must show that—

(1) The lender has corrected any violations on which the termination was based; and

(2) The lender meets all requirements for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR Part 668, may not be considered for reinstatement as a GSLP or PLUS Program lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) Within 60 days after receiving a request for reinstatement, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e)(1) If the Secretary denies the lender's request, or allows reinstatement subject to limitations, the lender, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender, whose eligibility to participate in the GSLP and the PLUS Program is reinstated subject to limitations imposed by the Secretary pursuant to paragraph (d)(3) of this section, may participate in those programs, subject to those limitations, pending a decision by the Secretary on a request under paragraph (e)(1) of this section.

(Reporting and recordkeeping requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1840-0538)

(Authority: 20 U.S.C. 1078-2, 1080, 1082, 1094)

Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

Source: 50 FR 5515, Feb. 8, 1985, unless otherwise noted.

§ 682.800 General.

An Authority that issues tax-exempt obligations in order to make or acquire loans under the Guaranteed Student Loan (GSL) or PLUS programs, or to advance funds to another entity for those purposes, shall submit a *Plan for Doing Business* (Plan) to the Secretary. In order for the Authority, or the recipient of those funds from the Authority, to receive special allowance payments on those loans, the Secretary must approve the Plan. This subpart lists the requirements which must be addressed in the Plan, the procedures for its submission, and the documentation required with the Plan. The Plan must also include provisions that meet the standards established in this subpart.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.801 Definitions applicable to Subpart H.

The definitions contained in § 682.200 apply to this subpart. In addition, the following definitions apply to this subpart:

Authority means any entity, public or private non-profit, which may issue tax-exempt obligations in order to obtain funds to be used for the making or purchasing of GSL or PLUS loans. The term "Authority" includes any agency, including a State postsecondary institution or any other instrumentality of a State or local governmental unit, regardless of the designation or primary purpose of that agency, which may issue tax-exempt obligations. The term also includes any party authorized to issue such obligations on behalf of a governmental agency, and any non-profit organization that issues qualified scholarship funding bonds under 26 U.S.C. 103(e).

Bond-use period of an issue means the period in which the lendable proceeds of the obligation or obligations comprising the issue will be used to make or purchase student loans.

Issuing expense means the costs of issuing the obligation, including survey costs, advertising and printing costs, fees of financial advisors and counsel, initial fees of trustees, paying agents, certifying or authenticating agents, and similar expenses.

Loan or *student loan* means any loan made under the GSL or PLUS programs.

Lendable proceeds means that portion of the original proceeds as defined in 26 CFR 1.103-13(b)(2)(i) which is neither deposited in a reasonably required reserve or replacement fund as defined in 26 CFR 1.103-14(d), nor committed, under the terms of the indenture or other agreement governing the issue, to be used for debt service or administrative and servicing costs of the Authority.

Obligation means any interest-bearing debt or original issue discount debt incurred by an Authority pursuant to its borrowing powers. As used in this subpart, this term means only an obligation issued to acquire funds for financing or refinancing the making or purchasing of student loans.

Proceeds means that term as used in 26 CFR 1.103-13(b)(2).

Refunding issue means one described in 26 CFR 1.103-14(e)(2).

Service area means the geographic area in which the Authority may do business under the Plan.

Short-term obligation means an obligation with a maturity of 270 days or less.

Source of student loan credit means a party which may make or purchase student loans, or provide funds to be used for those purposes.

Tax-exempt obligation means any obligation, the income from which is exempt from taxation under the Internal Revenue Code of 1954.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.802 Provisions required in Plan.

(a) Each Plan submitted for the approval of the Secretary must contain provisions necessary to ensure that—

(1) If an Authority acts as a secondary market for student loans, it shall exclude no eligible lender in the service area from participation in its program, and shall permit all eligible lenders to participate in its program on the same terms and conditions;

(2) No director, officer, or staff member of the Authority who receives compensation from the Authority may own stock in, or receive compensation of any kind from, any agency or organization that contracts to service and collect the loans in which the Authority has a legal or equitable interest;

(3) The Authority shall not purchase student loans at a premium or discount amounting to more than one percent of the unpaid principal amount borrowed plus interest accrued to the date of acquisition;

(4) The Authority shall not pay transfer fees in excess of the costs of transferring a loan portfolio or a portion of it from the lender to the Authority;

(5) The Authority shall, within the limits of funds available and subject to applicable State and Federal law, make loans to, or purchase loans made to, all eligible borrowers who are residents of, or who seek loans for a student to attend a school within, the service area of the Authority;

(6) The Authority has a plan under which the Authority shall pursue both the recruitment of new lenders to participate in a continuing program of benefits to students under both the GSL and PLUS programs and the

maintenance of existing lender commitments to the program;

(7) The Authority shall secure an annual audit of its loan program operations by a certified public accounting firm which will include a review performed in accordance with the audit standards found in § 682.830 of this subpart; and

(8) The Authority will not issue tax-exempt obligations for amounts in excess of the unmet need determined according to this subpart for student loan credit.

(b) The Secretary approves the Plan if it is submitted in the manner described in § 682.803, includes provisions needed to implement the requirements in this section and meets the standards set forth in this subpart.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.803 Submission of Plan for approval—required documentation.

An Authority shall submit with, or include in, each Plan submitted for the approval of the Secretary the following:

(a) If the Authority is a secondary market, a description of the procedures used to inform eligible lenders of the program of the Authority, samples of announcements to lenders regarding the Program, and a listing of the types of lenders and numbers of each type so informed.

(b) If the Authority contracts with an agent to service or collect loans in which the Authority has a legal or equitable interest, a sample of the form signed by all directors, officers, and staff of the Authority who receive compensation from the Authority certifying that these persons do not own stock in or receive compensation of any kind from that agent and a list of the persons who have signed the form.

(c) If the Authority is a secondary market, a schedule of the amount of loan transfer fees paid or to be paid by the Authority to parties from whom it purchases loans and, if the amount of a loan transfer fee is based on an estimate, an explanation of how that estimated amount was determined.

(d) A copy of any Federal or State law that the Authority believes limits its ability to make or purchase loans made to any eligible borrowers who are residents of, or who obtained loans for a student to attend a school located within its service area.

(e) A copy of the plan under which the Authority pursues both the recruitment of new lenders to participate in a continuing program of benefits to students under both the GSL and PLUS programs and the maintenance of existing lender commitments to the program.

(f) A copy of the most recent independent audit of the Authority performed in accordance with the audit standards found in § 682.830 of this subpart.

(g) A copy of any survey instrument or written inquiry form to be used to solicit from schools, lenders, and secondary markets information from which the Authority measures unmet need for student loan credit.

(h) A certification that the Authority is in compliance with section 438(d)(2) of the Act (regarding patterns or practices resulting in denial of access to student loan credit for certain borrowers).

(Approved by the Office of Management and Budget under control number 1840-0554)

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.804 Amendments to Plan.

(a) After a Plan is approved, an Authority shall submit to the Secretary amendments to the Plan or such documentation as may be needed to reflect accurately the policy and practice of the Authority within 30 days of the date that—

(1) An Authority amends any provision of a Plan which had previously been approved by the Secretary; or

(2) Any documentation or representation previously submitted pursuant to § 682.803 has been revised or rendered inaccurate in any material aspect.

(b) An Authority shall promptly amend its Plan to comply with changes in applicable statutes and regulations.

(Approved by the Office of Management and Budget under control number 1840-0554)

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.805 Approval of Plan.

(a) The Secretary promptly reviews a Plan submitted for approval to determine whether or not it is complete. If the Secretary finds that the information or documentation submitted in or with a Plan is not complete, the Secretary provides an explanation to the Authority of why the Plan is incomplete.

(b) The Secretary approves or disapproves the Plan within 30 days after receipt of a complete Plan submission.

(c) A complete Plan submission includes—

(1) A Plan which adopts the specific provisions listed in § 682.802 of this subpart; and

(2) The documentation described in § 682.803 of this subpart.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.806 Failure to comply with Plan.

(a) If the Secretary finds that an Authority has failed to comply with any requirement of its Plan or of this subpart, the Secretary takes actions necessary to protect the interests of the United States. These actions may include the following:

(1) Withholding payment of special allowances.

(2) Suspending or revoking approval of the Plan.

(3) Determining that loans made or purchased with the proceeds of a tax-exempt obligation by the Authority or any entity acting for the Authority after the date of suspension or revocation are ineligible for payments of special allowances.

(4) Requiring reimbursement from the Authority of special allowances paid on loans made or purchased by the Authority or any entity acting for the Authority.

(b) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to suspend or revoke approval of a Plan does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(c) Once final, the Secretary's decision to require a repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087-1)

NOTE: A decision by the Secretary under this section is currently subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321-322.

§§ 682.807—682.809 [Reserved]

§ 682.810 Standards for provisions of Plans for Doing Business—Need for proposed tax-exempt obligation.

To implement the requirements of § 682.802(a)(8), an Authority shall adopt provisions to determine, according to the standards, methodology, and procedures prescribed in §§ 682.812 through 682.815 and §§ 682.820 through 682.822, that the amount of the lendable proceeds of any proposed issue of tax-exempt obligations does not exceed the unmet need for student loan credit in its service area during the bond-use period of that issue. To make the determination, the Authority shall first estimate the need for student loan credit in its service area according to the standards described in § 682.812, or, in the case of a refunding issue, in § 682.820. The Authority shall then identify the credit resources available to meet that need, and estimate the amount of credit available from those resources, according to the standards described in § 682.813. That portion of the estimated need that exceeds the credit available from these resources is the unmet need, as described in §§ 682.814 and 682.820. The Authority shall include in its Plan provisions to measure those elements which meet the methodology requirements in §§ 682.815 and 682.821. For each particular tax-exempt obligation, the Authority shall demonstrate to the Secretary its compliance with these requirements in the manner described in § 682.822.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.811 Timing and advance repayment of tax-exempt obligations.

(a) *General.* An Authority may issue tax-exempt obligations in order to obtain funds—

(1) To make or purchase student loans, or provide funds to another for the making or purchasing of student loans;

(2) To retire an obligation issued to obtain funds for these purposes; or

(3) To retire an obligation issued to retire a prior retirement issue.

(b) *Time of issuance.* An Authority shall issue no tax-exempt obligation—

(1)(i) Earlier than six months before the bond-use period commences; or

(ii) If the obligation is part of a refunding issue, earlier than thirty days before it retires the prior obligation; and

(2) Except as provided in paragraphs (d) and (e) of this section, later than one year after the Secretary approves the determination of need for the obligation under § 682.822.

(c) *Bond-use period.* (1) An Authority shall issue no tax-exempt obligation for which the bond-use period exceeds—

(i) One year, for those proceeds to be used to make loans; or

(ii) Two years, for those proceeds to be used to purchase loans.

(2) An Authority shall use proceeds of a refunding issue to retire the prior obligation no later than 30 days after the date of issuance of the refunding issue.

(d) *Short-term obligations.* (1) At any time after the approval of an issue and before the end of the bond-use period of that issue, an Authority may, without review by the Secretary, issue a short-term obligation in order to replace or refund—

(i) All or part of that approved issue; or

(ii) A short-term obligation issued to replace or refund all or part of that approved issue.

(2) Short-term obligations issued pursuant to this paragraph retain the same bond-use period as the approved issue, and must be retired in accordance with the provisions of paragraph (g) of this section.

(e) *Credit support obligations.* At any time and without regard to other provisions of this subpart, an Authority may issue an obligation to evidence disbursements made under a credit-support agreement, such as a letter of credit, and promptly used to retire all or part of an issue approved under this subpart.

(f) *Resale of obligations.* At any time and without regard to other provisions of this subpart, a party providing credit support to an Authority, or a marketing agent or similar party, may resell an approved obligation or a short-term obligation described in paragraph (d) of this section which it acquired at the demand of a previous holder of the obligation.

(g) *Advance repayment.* (1) *Unexpended proceeds.* (i) Except as provided in paragraph (g)(1)(ii) of this section, at the close of the bond-use period of an issue, an Authority shall promptly repay obligations comprising that issue with all lendable proceeds of that issue not expended in the bond-use period for the purposes in paragraph (a) of this section.

(ii) An Authority need not use unexpended lendable proceeds to repay its obligations under paragraph (g)(1)(i) of this section to the extent that the Authority can demonstrate an unmet need for the unexpended funds (in accordance with §§ 682.814 or 682.820, as appropriate) by means of—

(A) A justification for another issue; or

(B) A separate justification.

(2) *Loan repayments.* An Authority shall use all loan repayments to repay its obligations in accordance with the requirements of paragraph (g)(3) of this section. For purposes of this section, the term "repayments" includes all payments of principal, interest, and late charges received from borrowers and all payments on default, death, disability, and bankruptcy claims received from a guarantee agency or the Federal government.

(3)(i) An Authority shall use all available repayments on loans acquired with the proceeds of an issue to retire a portion of that issue no later than the earlier of—

(A) Receipt of loan repayments in the amount of at least 20 per centum of the lendable proceeds of the issue; or

(B) Four years after the date of issuance, provided that loan repayments in an amount of at least five per centum of the lendable proceeds of the issue have been received.

(ii) An Authority shall make subsequent repayments of obligations annually on the anniversary of the most recent repayment made pursuant to paragraph (3)(i) of this section, provided that loan repayments in an amount of at least five per centum of the lendable proceeds of the issue have been received since that repayment.

(iii) An Authority need not use to retire outstanding obligations an amount of loan repayments not exceeding the difference between—

(A) The amount of annual debt service due on obligations outstanding after the most recent redemption and an additional one-twelfth of that annual debt service; and

(B) The amount repayments which the authority expects to receive in the twelve months succeeding the most recent redemption.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.812 Estimating need for student loan credit.

(a) An Authority shall estimate the reasonable need for student loan credit in its service area during the bond-use period to be equal to—

(1) The student loan volume in that area for the most recent twelve-month period for which actual data is available multiplied by the number of years in the bond-use period; or

(2) An estimated amount of need for student loans for the bond-use period based on a statistical analysis of historical data and credible assumptions regarding changes in the bond-use period.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.813 Estimating resources available for student loan credit.

An Authority shall estimate the amount of credit available for student loan credit in its service area during the bond-use period to include credit from the following sources:

(a) *Credit available from direct lenders.* An Authority shall include the total net amount of new credit expected to be made available during the bond-use period in its service area to students by direct lenders other than the Authority without regard to expected purchases by secondary markets as either—

(1) The amount of new student loan credit extended in that service area during the most recent twelve-month period for which data is available by lenders other than the Authority, minus the amount of loans sold to any secondary market during that same period, plus any net increase in student loan credit expected to be made available in the service area by those lenders identified to the Authority by the Secretary; or

(2) The amount of new student loan credit which such lenders represent, or are deemed to represent, that they expect to make available, minus the amount of loans they expect to sell to secondary markets, duirng the bond-use period.

(b) *Credit available from an Authority.* An Authority shall include as an available resource, to the extent that no statutory, regulatory, or contractual provision bars their use during the bond-use period for new student loan credit, the estimated amount, as of the beginning of the bond-use period, of—

(1) Any unexpended lendable proceeds of prior issues;

(2) Any repayments on loans held by the Authority; and

(3) Any other liquid assets of the Authority.

(c) *Credit available from secondary markets other than the Authority.* An Authority shall estimate the total amount of credit expected to be made available in its service area from all secondary market sources. The amount of credit available from a secondary market is the amount of loans it expects to purchase in the service area over the bond-use period. In making this estimate, an authority shall consider the Student Loan Marketing Association to be an available resource.

(1) An Authority shall include as the total amount of expected loan purchases during the bond-use period by secondary markets active in its service

area the sum of the following amounts of loans for borrowers in that area:

(i) Loans included in executed loan purchase contracts.

(ii) Loans included in loan purchase contracts under negotiation.

(iii) Loans included in neither executed loan purchase contracts nor contracts under negotiation which are held by lenders active in its service area to which a secondary market has made both—

(A) An individual solicitation, in writing, to enter into a contract for the purchase of specific types of loans at par or at a discount not exceeding one percent; and

(B) A commitment, in writing, to provide sufficient staff and administrative resources to enable the lender and the secondary market to close a loan purchase agreement within a reasonable time, not exceeding 90 days, from the receipt of the initial positive response of that lender to the solicitation.

(iv) Loans included in neither the actual nor proposed contracts described in paragraphs (c)(1) (i), (ii), and (iii) of this section which a secondary market estimates that it will purchase based on its purchase activity in that area during the most recent three-year period for which data is available.

(2) An Authority operating in a State in which the Student Loan Marketing Association is barred from purchasing loans shall include as an available resource the amount of loans that the Student Loan Marketing Association would be expected to purchase in the service area during the bond-use period if the Student Loan Marketing Association were not barred. The Authority shall deem that the Student Loan Marketing Association would purchase loans in the service area during the bond-use period in the same proportion to the projected student loan volume during that period in that area as the total amount of loan purchases by the Student Loan Marketing Association during the most recent twelve-month period for which data is available bears to the total amount of loans disbursed during that same period in all States except those which the Secretary has found to have barred the Association from purchasing loans during the most recent two years for which data is available. For purposes of this subpart, the Association is barred from purchasing loans in any State in which—

(i) Any State law or guarantee agency policy prohibits the Student Loan Marketing Association from purchasing loans or benefitting from the guarantee of the agency on student loans it purchases which were previously guaranteed by that agency;

(ii) Any requirement exists that loans guaranteed by a guarantee agency be serviced within that particular State; or

(iii) A guarantee agency fails to confirm in writing, upon request by the Association, that the full benefit of its guarantee continue to apply to loans previously guaranteed by that agency which are thereafter acquired by the Student Loan Marketing Association.

(3) A bar exists in a State until an Authority or other party eliminates the exclusionary policy or practice, or takes other action necessary to ensure that the Student Loan Marketing Association is no longer excluded, such as arranging with other agencies or organizations to offer in that area a loan insurance program under which the Student Loan Marketing Association can acquire loans guaranteed under the GSL and PLUS programs.

(d) *Credit available to the Authority by means of taxable obligations.* (1) An Authority shall estimate the amount of any funds reasonably available to the Authority from the Student Loan Marketing Association or other sources by means of taxable obligations. Credit is reasonably available by means of taxable obligations from such sources if—

(i) The Authority will have sufficient assets and revenues to meet the terms on which such credit can generally be obtained, in light of reasonable servicing and administrative costs to be incurred for the portfolio to be financed with that credit; and

(ii) Subject to paragraphs (d) (2) and (3) of this section, State law does not bar the Authority from issuing taxable obligations.

(2) An Authority which contends that State law prohibits it from issu-

ing taxable obligations may, for periods specified in paragraph (d)(3) of this section, disregard credit otherwise available from that source if that Authority—

(i) Submits to the Secretary a written opinion of the State attorney general that State law prohibits the Authority from issuing obligations, the interest income of which is taxable under the Internal Revenue Code. To demonstrate for purposes of this subpart that State law prohibits such borrowing, the opinion must articulate the specific State constitutional provision, statute, or case law which prohibits such borrowing, and cannot rely upon any claim of Federal constitutional or statutory right as a basis for this interpretation of State law; and

(ii) Commits itself to exercise its best efforts to have introduced and passed by the State legislature during the sessions described in paragraph (d)(3) of this section any amendment necessary to enable the Authority to issue taxable obligations.

(3)(i) If State law specifically bars the Authority from issuing taxable obligations, the Authority may disregard this credit source in assessing unmet need for obligations issued before the 90th day after adjournment of that session of the State legislature which includes the effective date of these regulations, or, if none includes that date, the next session after that date.

(ii) If a provision of the State constitution specifically bars the Authority from issuing taxable obligations, the Authority may disregard this source in assessing unmet need for obligations issued within one year after the date described in paragraph (d)(3)(i) of this section.

(4) For purposes of this subpart—

(i) The terms on which credit can generally be obtained by means of taxable obligations are those financing charges, issuing expenses, investment, drawdown, and collateral requirements on which an amount of credit similar to that available from the proposed tax-exempt obligation is available from the Student Loan Marketing Association, or if more favorable, from either of at least two lenders of the Authority's own choosing; and

(ii)(A) Servicing and administrative costs to be incurred are reasonable to the extent that they are similar in amount and type to those determined in the annual audit of the Authority's operations to be—

(*1*) Reasonable and allocable to any portfolio of GSL or PLUS program loans held by the Authority which is similar to that portfolio which the Authority plans to acquire with the proposed tax-exempt borrowing; and

(*2*) Not disallowable under 34 CFR Part 74, Appendix C, Part II, Sections D-3, D-4, D-5, D-6, D-8, or Appendix F, Sections G-2, G-9, G-12, G-14, G-20.

(B) The Authority may not rely upon costs that cannot be justified as provided in this paragraph in demonstrating that it cannot meet the terms on which credit by means of taxable obligations is generally available.

(C) If the Authority expects that its servicing and administrative costs will differ in type and amount from those examined in the audit of the Authority most recently submitted to the Secretary, the Authority shall demonstrate that those costs are reasonable and allocable to its GSL or PLUS loan programs according to 34 CFR Part 74 Appendix C or F, as appropriate, and not attributable to any of the disallowed cost categories listed in this paragraph.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.814 Unmet need.

(a) Subject to paragraph (b) of this section, the amount of unmet need for student loan credit in the service area of the Authority is equal to that portion of the need for student loan credit estimated pursuant to § 682.812 which exceeds the amounts of available credit estimated under § 682.813.

(b) *Special access credit programs.* (1) In addition to or in lieu of any unmet need determined under paragraph (a) of this section, an additional amount of unmet need exists if credit which the Authority estimates to be otherwise available under § 682.813—

(i) Will not be extended as loans to or for the benefit of particular classes of students because of prevalent lender limitations based on the school they attend, their place of residence, their academic year or course of study, the amount they wish to borrow, or a requirement that they or their parents have an existing customer relationship; or

(ii) Will not be made available through loan purchases by secondary markets active in that area because the terms or amount of solicitations by those secondary markets exclude loans which lenders active in that area wish to sell.

(2) The amount of unmet need under this paragraph is that amount of loans estimated in accordance with § 682.815 which the Authority demonstrates—

(i) Will not be made or purchased because of those limitations or exclusions; and

(ii) Any additional amount needed to provide a reasonable cumulative surplus for the special access credit program portfolio.

(c) *Overlapping service areas.* (1) If the service area of an Authority overlaps the service area of any other Authority or Authorities, the amount of unmet need for which that Authority may justify the issuance of a tax-exempt obligation is that portion of the unmet need determined under this section which these Authorities concur is to be served by the program of the issuing Authority.

(2) The Authority proposing a new tax-exempt issuance shall obtain the concurrence of the other Authorities in its area that its program serve a specific amount of the unmet need identified in that area.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.815 Methodology for measuring unmet need—new issues.

An Authority shall include the steps in this section in the methods used to estimate the reasonable need for student loan credit and the amount of resources available to meet that need.

(a) *Determining need for student loan credit.* (1) In order to estimate reasonable need for student loan credit during the bond-use period pursuant to § 682.812(a), an Authority shall—

(i) Determine from each guarantee agency doing business in its service area the amount of the total student loan volume in its service area for the most recent twelve-month period for which data is available; and

(ii) Multiply that figure by the number of years or fractions of years in the bond-use period.

(2) In order to estimate reasonable need for student loan credit during the bond-use period pursuant to § 682.812(b), an Authority shall—

(i) Determine from each guarantee agency doing business in its service area the amount of the total student loan volume in that service area for the three most recent twelve-month periods for which data is available;

(ii) Analyze that data in light of reasonably-supported economic and demographic projections along with other relevant data and assumptions to project the expected need for student loan credit during the bond-use period;

(iii) Submit its estimate of the expected need for student loan credit, with the documentation and analysis supporting the estimate, to the following organizations operating within its service area:

(A) The guarantee agency or agencies.

(B) The State postsecondary education planning entity (as designated by the State to conform with the requirements of section 1203 of the Higher Education Act of 1965, as amended (20 U.S.C. 1143).

(C) The State's association of student financial aid officers; and

(iv) Secure from each organization listed in paragraph (a)(2)(iii) of this section a written concurrence that the Authority's estimate of need for student loan credit in its service area over the bond-use period is reasonable and justified, based on an independent review of the analysis, data, and methods used by the Authority in light of the expertise and experience of the organization and the information available to it.

(3) An Authority shall, as part of its estimate, identify, explain, and make any corrections warranted by the following:

(i) Any difference greater than five percent per annum between the totals of each of the data elements required in paragraph (a)(2) of this section, in—

(A) The fiscal year immediately preceding the date of the issue; and

(B) The bond-use period.

(ii) Any difference greater than five percent annum between the totals of these data elements—

(A) As projected for any prior issues; and

(B) As actually occurring during the bond-use period for those issues.

(b) *Determining available credit from direct lenders.* (1) In order to estimate the amount of credit available within its service area from direct lenders during each year of the bond-use period pursuant to § 682.813(a)(1) an Authority shall—

(i) Determine from each guarantee agency doing business in its service area and, if necessary, from other sources, including lenders and secondary markets—

(A) The amount of student loans made in that service area during the most recent twelve-month period for which data is available; and

(B) The amount of secondary market purchases for that same twelve-month period of loans made in that service area;

(ii) Deduct from the total determined under paragraph (b)(1)(i)(A) of this section the amount of loans—

(A) Made by the Authority during that period; or

(B) Purchased by secondary markets, including the Authority, as determined under paragraph (b)(1)(i)(B) of this section;

(iii) Determine from any lender identified by the Secretary to the Authority the net amount of additional new loans it expects to make in the service area during the first year of the bond-use period. That net amount is the amount of new loans in excess of any amount of its loans included in the total determined under paragraph (b)(1)(i)(A) of this section, minus that portion of the amount of loans it made or will make in that service area which the lender expects to sell during that first year of the bond-use period which exceeds the amount of its loan sales included in the amount measured under paragraph (b)(1)(i)(B) of this section;

(iv) Add the amount determined under paragraph (b)(1)(ii) of this section to the amount determined under paragraph (b)(1)(iii) of this section; and

(v) Multiply the amount determined under paragraph (b)(1)(iv) by the number of years in the bond-use period.

(2) In order to estimate the amount of credit available within its service area from direct lenders during the bond-use period pursuant to § 682.813(a)(2), an Authority shall survey lenders reasonably expected to be willing to extend such credit in its service area. In this survey, the Authority shall solicit an estimate from the following lenders of the amount and terms of credit they expect to make available in its service area during the bond-use period:

(i) All direct lenders to students in the highest quartile, by loan volume, active in the service area during the most recent twelve-month period preceding the survey for which data is available.

(ii) A representative sample of all other direct lenders.

(iii) Such other sources as the Secretary may identify to the Authority.

(c) *Determining available credit from secondary markets.* In order to estimate the amount of credit available within the service area from secondary markets during the bond-use period pursuant to § 682.813(c), an Authority shall survey secondary markets reasonably expected to extend such credit in its service area. In this survey, the Authority shall solicit an estimate from the Student Loan Marketing Association and all other secondary market sources known to the Authority to be purchasing or willing to purchase loans made in its service area.

(1) An Authority shall solicit from each of these secondary markets an estimate of the amount of loans made to borrowers in its service area that it expects to purchase during the bond-use period. This estimate must identify and include the following:

(i) The amount of such loans it has committed to purchase during the bond-use period pursuant to executed loan purchase contracts of any kind.

(ii) The amount of such loans included in loan purchase contracts under negotiation.

(iii) The amount of such loans held by lenders active in the service area for which that secondary market has made the written solicitation to enter into a loan purchase agreement and commitment to execute that agreement described in § 682.813(c)(1)(iii), and the specific terms offered in that solicitation.

(iv) The amount of such loans which are not included within the terms of executed or proposed contracts described in paragraph (c)(1) (i), (ii), or (iii) of this section which the secondary market, based on its purchasing activity in that service area during the most recent three-year period for which data is available, expects to purchase during the bond-use period, and the data and assumptions used to make that estimate.

(2)(i) An Authority which pursuant to § 682.813(c)(2) must estimate the amount of loans that would purchased by the Student Loan Marketing Association shall contact the Secretary to obtain, for the most recent twelve-month period for which data is available, the total amounts of—

(A) Loans purchased by the Student Loan Marketing Association; and

(B) Student loans disbursed in all States except those in which the Secretary finds that SLMA was barred from purchasing loans at any time during the most recent two years for which data is available.

(ii) The proportion of loans which would be purchased by the Student Loan Marketing Association in the Authority's service area, for purposes of this paragraph, is deemed to be the quotient of the amount of determined under paragraph (c)(2)(i)(A) of this section divided by the amount determined under paragraph (c)(2)(i)(B) of this section.

(d) *Determining available credit from taxable obligations.* (1) To determine the availability of credit by means of taxable obligations, the Authority shall make a good-faith effort as described in this paragraph—

(i) To determine the terms on which such credit can be secured;

(ii) To assess its ability to meet those terms; and

(iii) Where it cannot meet the terms first offered, to negotiate any changes in those terms which would permit it to meet those terms.

(2) An Authority makes a good-faith effort to determine the terms on which credit can be secured on taxable obligations if it solicits the terms on which credit would be offered to it by written inquiry addressed (unless otherwise directed by that official) to the chief executive officer of—

(i) The Student Loan Marketing Association; and

(ii)(A) Two other parties known to the Authority to have extended or expressed an interest in extending such credit or underwriting an issue to secure such credit; or

(B) Two other credit sources which routinely offer similar or greater amounts of credit to commercial borrowers.

(3) An Authority makes a good-faith effort to assess its ability to meet the terms on which credit can be secured on taxable obligations if it analyzes the cash flow expected from the proposed portfolio under the terms of the financing offered as follows:

(i) Servicing costs are reasonable and expressed on a cost-per-account basis, with separate classifications, if needed, for differences in cost based on account status.

(ii) Only those administrative costs attributed to the proposed portfolio and reasonable as determined under § 682.813(d)(2)(ii) are included.

(iii) Federal interest and special allowance payments are treated as received no later than 30 days after the end of the period for which they were billed.

(iv) Student loan repayments and reimbursements by guarantors are treated as received no later than the average number of days after the due date on which the Authority receives payments on its other portfolios, or, if it has no other, the average number of days experienced for all lenders, as determined by the Secretary.

(v) Average borrower account size of the proposed portfolio is not less than—

(A) The average size as of the date acquired by the Authority or the commencement of repayment status, whichever is later, of accounts acquired in the most recent three year-period; or

(B) For an Authority which has been in operation less than three years, the average size, measured as in paragraph (d)(3)(v)(A), of accounts it expects to acquire for that portfolio.

(vi) Costs of issuance are itemized and documented.

(vii) Any assumed increases due to inflation in administrative and servicing costs do not exceed the average annual increase in the Department of Labor's Consumer Price Index (CPI) over the most recent three-year period for which data is available.

(viii) Projections of the 91-day Treasury bill rate are equal to that rate used by the Secretary to calculate the rate of special allowance payments for the most recent quarter.

(ix) Short-term interest rates used to calculate reinvestment rates for the portfolio and for any other purpose are not less than 75% of the 91-day Treasury bill rate used in paragraph (d)(3)(viii) of this section.

(x) Drawdowns of funds under the proposed taxable financing are scheduled—

(A) On the same day and in the same amount as the loan purchases expected under that financing; or

(B) At the beginning of each month in which the Authority expects to make loans and in the amount expected to be loaned in that month.

(4) An Authority makes a good-faith effort to negotiate terms on which it can secure credit on taxable obligations if it—

(i) Promptly responds to any specific offer of terms;

(ii) Identifies in a timely manner to a party offering those terms any legal or contractual provisions governing its operations which impede its ability to meet the terms offered by that party; and

(iii) Promptly proposes reasonable alternatives or modifications to any terms of the offer to which it cannot legally or financially accede.

(e) *Special access credit programs.* (1) In order to prove need for a special access credit program because of lender limitations under § 682.814(b)(1)(i), the Authority must establish the existence, scope and prejudicial effects of lender limitations on borrowers or potential borrowers by surveying schools and lenders in its service area. The Authority may do so by—

(i) Surveying a sample, representative by type, size, and location, of schools and lenders in its service area; or

(ii) Surveying all schools and lenders in its service area.

(2) The survey of the effects of lender limitations must identify at least—

(i) The incidence of lender limitations in its service area;

(ii) The specific types of lender limitations;

(iii) The number of affected students and potential students; and

(iv) The estimated amount of loans not made and loans made for less than the legal maximum because of these identified lender limitations.

(3) In order to prove need for a special access credit program because of limitations in the terms of a secondary market program as offered to lenders active in its service area under § 682.814(b)(1)(ii), an Authority shall establish the existence and effect of those limitations by means of survey of lenders active in its area. The survey must include—

(i) All direct lenders active in the service area in the highest quartile by loan volume during the most recent twelve-month period for which data is available; and

(ii) A representative sample of all other direct lenders.

(4) The survey of the effects of secondary market limitations must identify—

(i) The specific limitations, other than that of purchase at a discount not exceeding one percent, which preclude a secondary market making the solicitation and commitment described in § 682.814(c)(1)(iii) from purchasing certain types or amounts of loans; and

(ii) The amount of loans held by lenders active in the service area which have received such a written solicitation and commitment that—

(A) Those lenders wish to sell to a secondary market; and

(B) Do not fall within the terms of the purchase contract offered in that solicitation.

(5) In order to prove a need for an amount of loans in excess of the amount of loans determined to be needed in paragraph (e)(1) of this section, an Authority shall perform a revenue analysis according to the requirements of paragraph (d)(3) of this section.

(f) *Use of written inquiries.* The Authority shall use written inquiries to solicit information from each school, lender, and secondary market source included in any inquiry or survey conducted under this section.

(g) *Record retention.* The Authority shall maintain and make available for inspection records of all written inquiries and of all responses and failures to respond to those inquiries for three years beyond the end of the bond-use period of the issue for which they were gathered.

(h) *Evaluation of responses from direct lenders and secondary markets.* (1) If a response to the survey inquiry of the Authority by a direct lender to students does not clearly state the lender's intentions, or if no response is received from such a lender, the Authority shall consider that lender as intending to make loans in the service area during the bond-use period on the same terms and in an annual volume equal to that amount of credit extended by that lender in the most recent twelve-month period for which data is available, increased or decreased according to the average annual rate of change in the total loan volume in that area over the most recent three-year period for which data is available.

(2)(i) If a response to the survey inquiry of the Authority by a secondary market does not clearly state both the amount of loans to borrowers in the service area of the Authority which that party expects to purchase during the bond-use period and the basis for that estimate in accordance with § 682.815(c)(1), or if no response is received from that party, the Authority shall consider that secondary market as intending to purchase during each year of the bond-use period an amount of loans for borrowers in its service area equal to the amount of those loans it purchased in the most recent twelve-month period for which data is available, increased or decreased according to the average amount of annual change in that figure over the most recent three-year period for which data is available.

(ii) In determining for purposes of this estimate the amount of loans made for borrowers in its service area which were purchased by a secondary market, an Authority shall use information reasonably available from that secondary market, from appropriate guarantee agencies, and from the Secretary.

(3) If an Authority concludes that, in responding to its survey, a lender or a secondary market overestimated or underestimated its future activity in the service area by more than 5%, the Authority may revise the estimate of the respondent in light of—

(i) Recent performance by that respondent;

(ii) Past discrepancies between projection and performance by that respondent; and

(iii) Data and analyses which the Authority demonstrates will support a realistic estimate.

(i) *Overlapping service areas.* (1) If the service area of an Authority overlaps the service area of any other Authority or Authorities, the Authority proposing issuance of a tax-exempt obligation shall consult with each of those Authorities in order to obtain their written concurrence that assumptions and methodology used by the issuing Authority and the resulting estimates of need for student loan credit and resources available for student loan credit within the Authority's service area over the bond-use period are reasonable and justified, based on the concurring Authority's expertise and experience.

(2) The Authority proposing a new tax-exempt issuance shall obtain the concurrence of the other Authorities in its area that its program is to serve a specific amount of the unmet need identified in that area.

(3) If the issuing Authority cannot secure the concurrences described in

paragraphs (c) (1) and (2) of this section, the Authorities shall select a neutral arbiter to resolve their differences.

(Authority: 20 U.S.C. 1082, 1087-1)

§§ 682.816—682.819 [Reserved]

§ 682.820 Unmet need—refunding issues.

(a) An Authority shall determine whether the lendable proceeds of any proposed refunding issue exceed the unmet need for student loan credit in its service area by dividing the amount of the lendable proceeds into two portions, and assessing the availability of credit from the resources described in § 682.813 to meet the need for which each of these portions is to be used in the following manner:

(1)(i) An Authority shall determine according to paragraph (a)(1)(ii) of this section whether an unmet need exists for that portion of the lendable proceeds of a proposed refunding issue equal to the sum of—

(A) The amount of the outstanding balances, including principal and interest, of all student loans made or acquired with proceeds of the issue to be refunded; and

(B) The amount of the issue to be refunded spent or to be spent on—

(*1*) Issuing expenses and debt service for the prior issue; and

(*2*) Administrative costs and servicing expenses for loans made or acquired with the proceeds of the prior issue.

(ii) An Authority establishes an unmet need exists for the amount determined in paragraph (a)(1)(i) of this section, if credit is not reasonably available by means of taxable obligations to refund that portion of the prior issue.

(2) An Authority demonstrates that an unmet need exists for that portion of the lendable proceeds of a proposed refunding issue in excess of the amount included in paragraph (a)(1)(i) of this section, only to the extent that the Authority could demonstrate under § 682.814 that an unmet need exists for a new issue.

(b) An Authority shall comply with the provisions of § 682.811 regarding the timing and use of proceeds of refunding issues.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.821 Methods for measuring unmet need—refunding issues.

(a) The Authority shall use the methods prescribed in § 682.815 to measure the unmet need for that portion of the proceeds of a refunding issue treated as a new issue under § 682.820(a)(2).

(b) An Authority shall use the methods prescribed in § 682.815 (d), (f), and (g) to measure unmet need for that portion of the proceeds of a refunding issue described in § 682.820(a)(1).

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.822 Required documentation and procedures for approval of justification of need for a tax-exempt obligation.

(a) An Authority shall, for any proposed issue of tax-exempt obligations—

(1) Compile and maintain a record of any survey, the responses to the survey, the sources of any other data, and the assumptions on which it bases its estimates of the reasonable need for student loan credit and the amount of credit available from sources of student loan credit;

(2) Submit for approval by the Secretary, no earlier than six months nor later than 30 days before the proposed date of issue—

(i) A statement of the expected amount and terms of the issue;

(ii) A copy of any official statement regarding the issue, statements of sources and application of funds for the proposed issue and any prior issue (unless already submitted), and a copy of the most recent audit of the Authority's activities;

(iii) An explanation of the estimated need for student loan credit and resources available for student loan credit in that service area, determined according to the standards established in this subpart;

(iv) A detailed description of the data and assumptions on which its estimates of need and available resources are based; and

(v) If the Authority has received an offer of taxable financing, copies of the contract offered, all correspondence between the Authority and the offeror, any cash flow analyses supplied to the Authority by the party offering the credit, and any other supporting analyses and explanations provided by the party offering the credit or developed by the Authority of the feasibility for the Authority of the taxable financing offered.

(3) If the Authority proposes to issue a tax-exempt obligation to meet an unmet need determined under § 682.814(b) (Special access credit programs), the Authority shall submit, along with the information listed in paragraph (a)(2) of this section—

(i) A certification that it will use that portion of the proceeds of the issue justified under § 682.814(b)(1) solely to make available loans for that class of borrowers determined to have limited access to student loan credit, or acquire loans subject to those secondary market limitations;

(ii) A specific plan of action to implement this certification; and

(iii) A copy of any revenue analyses performed with regard to the need for issuance of an amount necessary to acquire loans other than those included in paragraph (a)(3)(i) of this section in order to assure a reasonable cumulative surplus for the special access credit program portfolio.

(b)(1) The Secretary approves the determination of the Authority that the lendable proceeds of a proposed tax-exempt obligation do not exceed the unmet need for student loan credit for the bond-use period in that service area if the documentation submitted under paragraph (a) of this section demonstrates a reasonable estimate based on the standards and methods in this subpart of both the need for student loan credit and of the amount of such credit available from other resources.

(2) The Secretary approves the justification of the Authority within 30 days after he receives documentation specified in this section which establishes an unmet need for a tax-exempt obligation.

(3) The Secretary may disapprove a justification, or may require additional information, if documentation submitted by an Authority does not establish an unmet need for a tax-exempt obligation.

(4) If an Authority submits a single justification for an issue to be used to finance acquisition of new loans and to refund outstanding obligations, the Secretary may treat the submission as two separate requests.

(c)(1) Any Authority adversely affected by a decision of the Secretary concerning whether that Authority will issue tax-exempt obligations for amounts in excess of the unmet need determined according to this subpart H may request that the Commissioner of Internal Revenue review that decision. The review by the Commissioner of Internal Revenue will not affect the exemption from income taxation of interest on any student loan bond or any issuer of such bonds.

(2)(i) A request for review by the Commissioner must be submitted to the Secretary and must include the following information:

(A) The Authority's request for review.

(B) A summary statement of facts from the Authority concerning its need to issue tax-exempt obligations and a memorandum of law supporting its position.

(ii) This information, together with a copy of the Secretary's decision and, if not included in the decision, a summary statement of facts and a memorandum supporting that decision, will be forwarded to the Commissioner of Internal Revenue. The Authority may not present information to the Commissioner that had not been submitted to the Secretary prior to the Secretary's decision (other than the information specified above).

(3)(i) The Commissioner will review the Secretary's decision in light of the applicable regulations of the Department of Education and determine whether that decision was reasonable. The Commissioner will review questions of law concerning the need to issue tax exempt bonds arising under—

(A) Section 682.810, relating to standards for provisions of plan for doing business;

(B) Section 682.811, relating to timing and advance repayment of tax-exempt obligations;

(C) Section 682.812, relating to estimating need for student loan credit;

(D) Section 682.813, relating to estimating resources available for student loan credit;

(E) Section 682.814, relating to unmet needs;

(F) Section 682.815, relating to methodology for measuring unmet need;

(G) Section 682.820, relating to unmet need—refunding issues;

(H) Section 682.821, relating to methods for measuring unmet need—refunding issues; and

(I) Section 682.822, relating to required documentation and procedures for approval of justification of need for a tax-exempt obligation.

(ii) The Commissioner's review will be based exclusively on the information submitted pursuant to paragraph (c)(2). The Commissioner will not review findings of fact. An Authority is not entitled to a conference with representatives of the Commissioner.

(4) Within 60 days of the Secretary's receipt of a request for review by the Commissioner, the Commissioner will issue a report to the Secretary and the Authority. An Authority may waive the 60-day requirement for issuance of a report. The report will contain an advisory opinion as to whether the Secretary's decision was reasonable. The Secretary is not bound by the Commissioner's report. Once a decision of the Secretary has been reviewed by the Commissioner, no further review will be given to any aspect of that decision by the Commissioner. A report issued pursuant to this paragraph may not be used or cited as precedent and is not subject to further administrative or judicial review.

(5) Upon receipt of a written appeal report from the Commissioner of Internal Revenue, the Secretary will review his decision relating to the Authority in light of that report. The Secretary will issue a final decision to the Authority within 30 days of receipt of the report of the Commissioner of Internal Revenue.

(Approved by the Office of Management and Budget under control number 1840-0554)

(Authority: 20 U.S.C. 1082, 1087-1; Pub. L. 98-369, sec. 646, 98 Stat. 941 (1984))

§ 682.823 Sanctions for material misrepresentation regarding unmet need.

(a) If at any time the Secretary determines that the submission for approval required under § 682.822 contains or contained a material misrepresentation, the Secretary may to the extent provided in paragraph (b) of this section—

(1) Require reimbursement from the Authority of special allowance payments to the Authority or to any other party on loans made or purchased with the proceeds of the issue with respect to which the misrepresentation was made; and

(2) Determine to be ineligible for special allowance payments any loans to be made or purchased by the Authority or any entity acting for the Authority with the unexpended proceeds of the issue with respect to which the misrepresentation was made.

(b) If an Authority uses funds from sources other than a tax-exempt obligation to retire an issue with respect to which the Secretary has determined that a material misrepresentation was made, the Secretary takes the adverse actions described in paragraph (a) of this section only with regard to those special allowance payments which accrued earlier than ninety days before that issue was retired.

(c) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to take any of the actions in § 682.806 does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(d) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087-1)

§§ 682.824—682.829 [Reserved]

§ 682.830 Audit standards.

The Authority shall have an annual financial and compliance audit by an independent certified public accounting firm of its loan and/or loan purchasing program. The audit shall be conducted in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office (GAO) publication, *Standards for Audit of Governmental Organizations, Programs, Activities and Functions.* The Authority shall submit a copy of the audit report within 30 days after the completion of such report to its regional office of the Education Department's Office of Inspector General.

(a) The audit must examine the activities of the Authority for compliance with the provisions of the Plan, and must specifically articulate, with appropriate substantiation, its conclusions regarding compliance with each of the provisions of § 682.802 and with the Plan of the Authority.

(b) The audit must also examine the expenditures of the Authority using the cost principles found in Appendix C of 34 CFR Part 74 if the Authority is an agency or instrumentality of a State or local government, or Appendix F of that Part if the Authority is a non-profit corporation, as follows:

(1) The GSL and PLUS loan programs of the Authority are treated as the Federal grant or contract with regard to which costs are allocated.

(2) All costs incurred by the Authority are attributed to a cost category identified in the appropriate appendix.

(3) Each cost is examined to determine whether it is reasonable and allocable to the GSL and PLUS loan programs of the Authority.

(4) Although costs must be attributed, where warranted, to categories of costs characterized in that Appendix as unallowable, no determination is to be made that a cost is disallowed merely because such cost was one for which the Appendix requires advance approval by the Secretary or because the Appendix classifies that cost as unallowable.

(Authority: 20 U.S.C. 1082, 1087-1)

APPENDIX A TO PART 682—STANDARDS FOR ACCEPTABLE REFUND POLICIES BY PARTICIPATING SCHOOLS

For purposes of § 682.606(b), the Secretary considers guidelines VI, VII, and VIII of the following document to be acceptable elements of a fair and equitable school refund policy. The document, which is reproduced in its entirety for the convenience of the reader, was developed by the National Association of College and University Business Officers. The document does not affect a school's obligation to comply with other Department of Education regulations.

Policy Guidelines for Refund of Student Charges

(I) *The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students.* The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

(II) *Institutions should seek consumer views in the process of establishing and amending charge and refund structures.* Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is a desirable approach for assessing student needs and creating public awareness of institutional requirements.

(III) *Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students.* Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment to the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) *Institutions should clearly designate all optional charges as "optional" in all published schedules and related materials. Clearly, charges that the mandatory and charges that are optional must be plainly differentiated in all printed materials.* Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

(V) *Institutions should clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules.* Institutions determine on an individual basis which of their charges are refundable or non-refundable. In general, admission fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (e.g. tuition deposits). Others are refundable according to the terms of the deposit agreement (e.g., deposits for breakage).

(VI) *Institutions should refund housing rental charges, less a deposit, so long as written notification of concellation is made prior to well-publicized date that provides reasonable opportunity to make the space available to other students.* Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) *Institutions should refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract. Subsequent board charges should be refunded on a pro rata basis less a withdrawal fee.* It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) *The institutional tuition refund policy for an academic period should include the following minimum guidelines:*

A. *The institution should refund 100 percent of the tuition charges, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.*

B. *The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the first 25 percent of the academic period.* It is reasonable to refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless state law imposes a more restrictive refund policy.

(IX) *The institution should assess no penalty charges where the institution, as opposed to the student is in error. The institution has assessed charges in error.* Penalty charges, such as those involving late registration fees, change of schedule fees, late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

(X) *Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institution officer.* A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) *Institutions should pay or credit refunds due on a timely basis.* The definition of "timely basis" should include the time required to process a formal student request for refund, to process a check if required, and to allow for mail delivery, when necessary. If an institution has a policy that a refund of an inconsequential amount will not be made, this policy should be published in part of all materials related to refund policies.

(XII) *Institutions should publicize, as a part of their dissemination of information on charges and refunds, that an appeals process exists for students or parents who feel that individual circumstances warrant exceptions from published policy. The informational materials should include the name, title, and address of the official responsible.* Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

[51 FR 40926, Nov. 10, 1986]

APPENDIX B TO PART 682—GUARANTEED STUDENT LOAN PROGRAM TABLES FOR DETERMINATION OF EXPECTED FAMILY CONTRIBUTION FOR 1986-87

If authorized under the provisions of § 682.301(f)(2)(ii), an institution may use the following tables to determine the student's expected family contribution.

For purposes of the four tables—

"Dependent student" means a student who does not qualify as an "independent student";

"Independent student" is defined in 34 CFR 668.1a; and

"Adjusted gross income" means the income, as defined in section 62 of the Internal Revenue Code, received in 1985.

TABLE A.—EXPECTED FAMILY CONTRIBUTION FOR A DEPENDENT STUDENT FROM A TWO-PARENT FAMILY—1986-87

For a dependent student from a two-parent family, the educational institution determines the student's expected family contribution according to Table A. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution.

As used in Table A, "Family members" include the student, the student's spouse and their dependents, and the student's mother and father and their dependents. If the family includes a step-parent whose income is included in the adjusted gross family income, family members also include the step-parent and the dependents of the step-parent.

Table A is based on the following assumptions:

- One of the two parents is employed.
- No assets are considered.
- All of the family income was earned by the employed parent.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following—

—Federal income tax, based on standard deductions, computed at the rate applied to married taxpayers filing joint returns;

—F.I.C.A. (Social Security) for one wage earner:

—Average State and other taxes (8%); and

—A Standard Maintenance Allowance based on the average non-discretionary living expenses for families, derived from the Bureau of Labor Statistics low budget standard, and adjusted for inflation and family size. The Standard Maintenance Allowance does not include an allowance for the living expenses of the dependent student for the 9 months the student is attending school because those living expenses are included in the student's cost of attendance.

To this balance, called "available income," which represents discretionary income, a conversion percentage is applied. The percentage increases as available income increases. The resulting value is the expected family contribution.

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family—1986-87

Adjusted Gross Income	Number of Family Members									
	3	4	5	6	7	8	9	10	11	12
Less than 30,001	*** AUTOMATICALLY ELIGIBLE ***									
30,001 - 30,124	2,750	2,110	1,600	1,090	720	340	0	0	0	0
30,125 - 30,374	2,800	2,150	1,630	1,130	750	370	0	0	0	0
30,375 - 30,624	2,850	2,190	1,670	1,160	780	410	30	0	0	0
30,625 - 30,874	2,900	2,240	1,710	1,200	820	440	60	0	0	0
30,875 - 31,124	2,950	2,280	1,750	1,230	850	480	100	0	0	0
31,125 - 31,374	3,000	2,330	1,790	1,270	890	510	130	0	0	0
31,375 - 31,624	3,050	2,370	1,830	1,300	920	540	170	0	0	0
31,625 - 31,874	3,100	2,410	1,860	1,340	960	580	200	0	0	0
31,875 - 32,124	3,160	2,460	1,900	1,370	990	610	240	0	0	0
32,125 - 32,374	3,210	2,500	1,940	1,400	1,030	650	270	0	0	0
32,375 - 32,624	3,270	2,540	1,980	1,440	1,060	680	300	0	0	0
32,625 - 32,874	3,330	2,590	2,010	1,470	1,100	720	340	0	0	0
32,875 - 33,124	3,390	2,640	2,050	1,500	1,130	750	370	0	0	0
33,125 - 33,374	3,450	2,690	2,090	1,540	1,160	790	410	30	0	0
33,375 - 33,624	3,510	2,740	2,140	1,570	1,200	820	440	60	0	0
33,625 - 33,874	3,570	2,790	2,180	1,600	1,230	860	480	100	0	0
33,875 - 34,124	3,630	2,840	2,220	1,640	1,260	890	510	130	0	0
34,125 - 34,374	3,690	2,890	2,270	1,680	1,300	920	550	170	0	0
34,375 - 34,624	3,750	2,940	2,310	1,710	1,330	960	580	200	0	0
34,625 - 34,874	3,800	3,000	2,350	1,750	1,360	990	620	240	0	0
34,875 - 35,124	3,860	3,050	2,400	1,790	1,390	1,020	650	270	0	0
35,125 - 35,374	3,920	3,100	2,440	1,830	1,430	1,060	680	310	0	0
35,375 - 35,624	3,980	3,150	2,480	1,860	1,460	1,090	720	340	0	0
35,625 - 35,874	4,050	3,190	2,530	1,900	1,490	1,120	750	380	0	0
35,875 - 36,124	4,120	3,250	2,570	1,940	1,530	1,150	780	410	30	0
36,125 - 36,374	4,190	3,310	2,620	1,980	1,560	1,190	820	440	70	0
36,375 - 36,624	4,250	3,370	2,670	2,010	1,590	1,220	850	480	100	0
36,625 - 36,874	4,320	3,420	2,720	2,050	1,630	1,250	880	510	140	0
36,875 - 37,124	4,390	3,480	2,770	2,090	1,660	1,290	910	540	170	0
37,125 - 37,374	4,450	3,540	2,820	2,140	1,700	1,320	950	580	200	0
37,375 - 37,624	4,520	3,590	2,860	2,180	1,740	1,350	980	610	240	0
37,625 - 37,874	4,590	3,650	2,910	2,220	1,780	1,390	1,010	640	270	0
37,875 - 38,124	4,650	3,710	2,960	2,260	1,810	1,420	1,050	670	300	0
38,125 - 38,374	4,720	3,760	3,010	2,300	1,850	1,450	1,080	710	340	0
38,375 - 38,624	4,790	3,820	3,060	2,340	1,890	1,480	1,110	740	370	0
38,625 - 38,874	4,850	3,880	3,110	2,380	1,920	1,520	1,150	770	400	30
38,875 - 39,124	4,920	3,940	3,150	2,430	1,960	1,550	1,180	810	430	60
39,125 - 39,374	4,990	4,010	3,200	2,470	2,000	1,580	1,210	840	470	100
39,375 - 39,624	5,060	4,070	3,260	2,510	2,030	1,620	1,240	870	500	130
39,625 - 39,874	5,130	4,150	3,320	2,550	2,070	1,650	1,280	910	540	160

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members									
	3	4	5	6	7	8	9	10	11	12
39,875 - 40,124	5,200	4,220	3,390	2,600	2,120	1,690	1,320	940	570	200
40,125 - 40,374	5,270	4,300	3,450	2,660	2,160	1,730	1,350	980	610	240
40,375 - 40,624	5,340	4,370	3,510	2,710	2,210	1,770	1,390	1,020	650	270
40,625 - 40,874	5,400	4,450	3,580	2,770	2,260	1,810	1,420	1,050	680	310
40,875 - 41,124	5,470	4,520	3,640	2,820	2,300	1,850	1,460	1,090	720	350
41,125 - 41,374	5,540	4,590	3,710	2,870	2,350	1,890	1,500	1,130	760	380
41,375 - 41,624	5,610	4,660	3,770	2,930	2,400	1,930	1,530	1,170	790	420
41,625 - 41,874	5,680	4,720	3,830	2,980	2,440	1,970	1,570	1,200	830	460
41,875 - 42,124	5,750	4,790	3,900	3,040	2,490	2,010	1,600	1,240	870	500
42,125 - 42,374	5,820	4,860	3,960	3,090	2,540	2,050	1,640	1,270	900	530
42,375 - 42,624	5,890	4,930	4,030	3,150	2,580	2,100	1,680	1,310	940	570
42,625 - 42,874	5,960	5,000	4,100	3,200	2,640	2,150	1,720	1,340	980	610
42,875 - 43,124	6,030	5,070	4,170	3,260	2,690	2,190	1,760	1,380	1,010	640
43,125 - 43,374	6,100	5,140	4,240	3,320	2,750	2,240	1,800	1,410	1,050	680
43,375 - 43,624	6,170	5,210	4,310	3,380	2,800	2,290	1,840	1,450	1,080	720
43,625 - 43,874	6,240	5,280	4,380	3,440	2,850	2,330	1,880	1,480	1,120	750
43,875 - 44,124	6,310	5,350	4,450	3,500	2,910	2,380	1,920	1,520	1,150	790
44,125 - 44,374	6,370	5,420	4,520	3,560	2,960	2,430	1,960	1,550	1,190	820
44,375 - 44,624	6,440	5,490	4,590	3,620	3,010	2,470	2,000	1,590	1,220	860
44,625 - 44,874	6,510	5,560	4,660	3,680	3,060	2,520	2,040	1,630	1,260	890
44,875 - 45,124	6,580	5,630	4,720	3,740	3,110	2,560	2,080	1,670	1,290	930
45,125 - 45,374	6,650	5,690	4,790	3,800	3,160	2,610	2,130	1,710	1,330	960
45,375 - 45,624	6,720	5,760	4,860	3,850	3,210	2,660	2,180	1,750	1,360	1,000
45,625 - 45,874	6,790	5,830	4,930	3,910	3,270	2,710	2,220	1,790	1,400	1,030
45,875 - 46,124	6,860	5,900	5,000	3,980	3,330	2,760	2,270	1,830	1,430	1,070
46,125 - 46,374	6,930	5,970	5,070	4,050	3,390	2,810	2,310	1,870	1,470	1,100
46,375 - 46,624	7,000	6,040	5,140	4,120	3,450	2,860	2,360	1,910	1,500	1,140
46,625 - 46,874	7,070	6,110	5,210	4,190	3,510	2,910	2,400	1,950	1,540	1,170
46,875 - 47,124	7,140	6,180	5,280	4,260	3,570	2,960	2,440	1,990	1,580	1,210
47,125 - 47,374	7,210	6,250	5,350	4,330	3,620	3,010	2,480	2,020	1,610	1,250
47,375 - 47,624	7,280	6,320	5,420	4,400	3,680	3,060	2,530	2,060	1,650	1,280
47,625 - 47,874	7,350	6,390	5,490	4,470	3,740	3,110	2,570	2,100	1,690	1,320
47,875 - 48,124	7,410	6,460	5,560	4,540	3,800	3,160	2,620	2,150	1,730	1,350
48,125 - 48,374	7,480	6,530	5,630	4,610	3,860	3,220	2,670	2,190	1,770	1,390
48,375 - 48,624	7,550	6,600	5,700	4,680	3,920	3,280	2,720	2,230	1,810	1,420
48,625 - 48,874	7,620	6,670	5,760	4,750	3,990	3,340	2,770	2,270	1,840	1,460
48,875 - 49,124	7,690	6,730	5,830	4,820	4,060	3,400	2,820	2,320	1,880	1,490
49,125 - 49,374	7,760	6,800	5,900	4,880	4,130	3,450	2,870	2,360	1,920	1,530
49,375 - 49,624	7,830	6,870	5,970	4,950	4,200	3,510	2,920	2,400	1,950	1,560
49,625 - 49,874	7,900	6,940	6,040	5,020	4,270	3,570	2,970	2,450	1,990	1,590

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members 3	4	5	6	7	8	9	10	11	12
49,875 - 50,124	7,970	7,010	6,110	5,090	4,340	3,630	3,020	2,490	2,030	1,620
50,125 - 50,374	8,040	7,080	6,180	5,160	4,410	3,690	3,070	2,530	2,060	1,660
50,375 - 50,624	8,110	7,150	6,250	5,230	4,480	3,750	3,120	2,570	2,110	1,700
50,625 - 50,874	8,180	7,220	6,320	5,300	4,550	3,810	3,170	2,620	2,150	1,740
50,875 - 51,124	8,240	7,290	6,390	5,370	4,610	3,870	3,220	2,670	2,190	1,770
51,125 - 51,374	8,310	7,360	6,460	5,440	4,680	3,930	3,280	2,720	2,240	1,810
51,375 - 51,624	8,370	7,430	6,530	5,510	4,750	4,000	3,340	2,770	2,280	1,850
51,625 - 51,874	8,430	7,500	6,600	5,580	4,820	4,070	3,400	2,820	2,320	1,880
51,875 - 52,124	8,500	7,560	6,670	5,650	4,890	4,140	3,460	2,870	2,360	1,920
52,125 - 52,374	8,560	7,630	6,740	5,720	4,960	4,210	3,520	2,920	2,410	1,960
52,375 - 52,624	8,620	7,690	6,800	5,790	5,030	4,280	3,580	2,970	2,450	1,990
52,625 - 52,874	8,690	7,750	6,870	5,860	5,100	4,350	3,640	3,020	2,490	2,030
52,875 - 53,124	8,750	7,820	6,940	5,920	5,170	4,410	3,700	3,070	2,540	2,070
53,125 - 53,374	8,810	7,880	7,000	5,990	5,240	4,480	3,760	3,120	2,580	2,110
53,375 - 53,624	8,880	7,940	7,070	6,060	5,310	4,550	3,810	3,170	2,630	2,150
53,625 - 53,874	8,940	8,010	7,130	6,130	5,380	4,620	3,870	3,230	2,680	2,200
53,875 - 54,124	9,000	8,070	7,190	6,200	5,450	4,690	3,940	3,290	2,730	2,240
54,125 - 54,374	9,070	8,130	7,260	6,260	5,520	4,760	4,010	3,350	2,780	2,280
54,375 - 54,624	9,130	8,200	7,320	6,330	5,590	4,830	4,080	3,410	2,830	2,330
54,625 - 54,874	9,190	8,260	7,380	6,390	5,650	4,900	4,140	3,470	2,880	2,370
54,875 - 55,124	9,260	8,320	7,450	6,450	5,720	4,970	4,210	3,530	2,930	2,410
55,125 - 55,374	9,320	8,390	7,510	6,520	5,790	5,040	4,280	3,580	2,980	2,450
55,375 - 55,624	9,380	8,450	7,570	6,580	5,850	5,110	4,350	3,640	3,030	2,500
55,625 - 55,874	9,450	8,510	7,640	6,640	5,910	5,180	4,420	3,700	3,080	2,540
55,875 - 56,124	9,510	8,580	7,700	6,710	5,980	5,250	4,490	3,760	3,130	2,580
56,125 - 56,374	9,570	8,640	7,760	6,770	6,040	5,310	4,560	3,820	3,180	2,630
56,375 - 56,624	9,640	8,700	7,830	6,830	6,100	5,370	4,630	3,880	3,240	2,680
56,625 - 56,874	9,700	8,770	7,890	6,900	6,170	5,440	4,700	3,940	3,300	2,730
56,875 - 57,124	9,760	8,830	7,960	6,960	6,230	5,500	4,770	4,010	3,360	2,780
57,125 - 57,374	9,830	8,900	8,020	7,020	6,290	5,560	4,830	4,080	3,410	2,830
57,375 - 57,624	9,890	8,960	8,080	7,090	6,360	5,630	4,900	4,150	3,470	2,880
57,625 - 57,874	9,950	9,020	8,150	7,150	6,420	5,690	4,960	4,220	3,530	2,930
57,875 - 58,124	10,020	9,090	8,210	7,220	6,480	5,750	5,020	4,290	3,590	2,980
58,125 - 58,374	10,080	9,150	8,270	7,280	6,550	5,820	5,090	4,360	3,650	3,030
58,375 - 58,624	10,150	9,210	8,340	7,340	6,610	5,880	5,150	4,420	3,710	3,080
58,625 - 58,874	10,210	9,280	8,400	7,410	6,670	5,940	5,210	4,480	3,770	3,140
58,875 - 59,124	10,270	9,340	8,460	7,470	6,740	6,010	5,280	4,550	3,830	3,190
59,125 - 59,374	10,340	9,400	8,530	7,530	6,800	6,070	5,340	4,610	3,880	3,240
59,375 - 59,624	10,400	9,470	8,590	7,600	6,870	6,130	5,400	4,670	3,940	3,300
59,625 - 59,874	10,460	9,530	8,650	7,660	6,930	6,200	5,470	4,740	4,010	3,360

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members 3	4	5	6	7	8	9	10	11	12
59,875 - 60,124	10,530	9,590	8,720	7,720	6,990	6,260	5,530	4,800	4,070	3,420
60,125 - 60,374	10,590	9,660	8,780	7,790	7,060	6,320	5,590	4,860	4,130	3,480
60,375 - 60,624	10,650	9,720	8,840	7,850	7,120	6,390	5,660	4,930	4,200	3,530
60,625 - 60,874	10,720	9,780	8,910	7,910	7,180	6,450	5,720	4,990	4,260	3,590
60,875 - 61,124	10,780	9,850	8,970	7,980	7,250	6,520	5,780	5,050	4,320	3,640
61,125 - 61,374	10,840	9,910	9,030	8,040	7,310	6,580	5,850	5,120	4,390	3,690
61,375 - 61,624	10,910	9,970	9,100	8,100	7,370	6,640	5,910	5,180	4,450	3,750
61,625 - 61,874	10,970	10,040	9,160	8,170	7,440	6,710	5,970	5,240	4,510	3,800
61,875 - 62,124	11,030	10,100	9,220	8,230	7,500	6,770	6,040	5,310	4,580	3,860
62,125 - 62,374	11,100	10,160	9,290	8,290	7,560	6,830	6,100	5,370	4,640	3,910
62,375 - 62,624	11,160	10,230	9,350	8,360	7,630	6,900	6,160	5,430	4,700	3,970
62,625 - 62,874	11,220	10,290	9,410	8,420	7,690	6,960	6,230	5,500	4,770	4,040
62,875 - 63,124	11,290	10,350	9,480	8,480	7,750	7,020	6,290	5,560	4,830	4,100
63,125 - 63,374	11,350	10,420	9,540	8,550	7,820	7,090	6,360	5,620	4,890	4,160
63,375 - 63,624	11,410	10,480	9,600	8,610	7,880	7,150	6,420	5,690	4,960	4,230
63,625 - 63,874	11,480	10,540	9,670	8,670	7,940	7,210	6,480	5,750	5,020	4,290
63,875 - 64,124	11,540	10,610	9,730	8,740	8,010	7,280	6,550	5,810	5,080	4,350
64,125 - 64,374	11,600	10,670	9,800	8,800	8,070	7,340	6,610	5,880	5,150	4,420
64,375 - 64,624	11,670	10,740	9,860	8,860	8,130	7,400	6,670	5,940	5,210	4,480
64,625 - 64,874	11,730	10,800	9,920	8,930	8,200	7,470	6,740	6,010	5,270	4,540
64,875 - 65,124	11,800	10,860	9,990	8,990	8,260	7,530	6,800	6,070	5,340	4,610
65,125 - 65,374	11,860	10,930	10,050	9,060	8,320	7,590	6,860	6,130	5,400	4,670
65,375 - 65,624	11,920	10,990	10,110	9,120	8,390	7,660	6,930	6,200	5,460	4,730
65,625 - 65,874	11,980	11,050	10,180	9,180	8,450	7,720	6,990	6,260	5,530	4,800
65,875 - 66,124	12,040	11,120	10,240	9,250	8,510	7,780	7,050	6,320	5,590	4,860
66,125 - 66,374	12,100	11,180	10,300	9,310	8,580	7,850	7,120	6,390	5,660	4,920
66,375 - 66,624	12,160	11,240	10,370	9,370	8,640	7,910	7,180	6,450	5,720	4,990
66,625 - 66,874	12,220	11,300	10,430	9,440	8,710	7,970	7,240	6,510	5,780	5,050
66,875 - 67,124	12,280	11,360	10,490	9,500	8,770	8,040	7,310	6,580	5,850	5,110
67,125 - 67,374	12,330	11,420	10,560	9,560	8,830	8,100	7,370	6,640	5,910	5,180
67,375 - 67,624	12,390	11,480	10,620	9,630	8,900	8,160	7,430	6,700	5,970	5,240
67,625 - 67,874	12,450	11,540	10,680	9,690	8,960	8,230	7,500	6,770	6,040	5,310
67,875 - 68,124	12,510	11,600	10,740	9,750	9,020	8,290	7,560	6,830	6,100	5,370
68,125 - 68,374	12,570	11,660	10,800	9,820	9,090	8,360	7,620	6,890	6,160	5,430
68,375 - 68,624	12,630	11,710	10,860	9,880	9,150	8,420	7,690	6,960	6,230	5,500
68,625 - 68,874	12,690	11,770	10,920	9,940	9,210	8,480	7,750	7,020	6,290	5,560
68,875 - 69,124	12,750	11,830	10,980	10,000	9,280	8,550	7,810	7,080	6,350	5,620
69,125 - 69,374	12,800	11,890	11,030	10,060	9,340	8,610	7,880	7,150	6,420	5,690
69,375 - 69,624	12,860	11,950	11,090	10,120	9,400	8,670	7,940	7,210	6,480	5,750
69,625 - 69,874	12,920	12,010	11,150	10,180	9,470	8,740	8,010	7,270	6,540	5,810

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members									
	3	4	5	6	7	8	9	10	11	12
69,875 - 70,124	12,980	12,070	11,210	10,240	9,520	8,800	8,070	7,340	6,610	5,880
70,125 - 70,374	13,040	12,130	11,270	10,290	9,580	8,860	8,130	7,400	6,670	5,940
70,375 - 70,624	13,100	12,180	11,330	10,350	9,640	8,930	8,200	7,460	6,730	6,000
70,625 - 70,874	13,160	12,240	11,390	10,410	9,700	8,990	8,260	7,530	6,800	6,070
70,875 - 71,124	13,220	12,300	11,450	10,470	9,760	9,050	8,320	7,590	6,860	6,130
71,125 - 71,374	13,270	12,360	11,500	10,530	9,820	9,110	8,390	7,650	6,920	6,190
71,375 - 71,624	13,330	12,420	11,560	10,590	9,880	9,170	8,450	7,720	6,990	6,260
71,625 - 71,874	13,390	12,480	11,620	10,650	9,940	9,220	8,510	7,780	7,050	6,320
71,875 - 72,124	13,450	12,540	11,680	10,710	9,990	9,280	8,570	7,850	7,110	6,380
72,125 - 72,374	13,510	12,600	11,740	10,760	10,050	9,340	8,630	7,910	7,180	6,450
72,375 - 72,624	13,570	12,650	11,800	10,820	10,110	9,400	8,690	7,970	7,240	6,510
72,625 - 72,874	13,630	12,710	11,860	10,880	10,170	9,460	8,750	8,040	7,300	6,570
72,875 - 73,124	13,690	12,770	11,920	10,940	10,230	9,520	8,810	8,100	7,370	6,640
73,125 - 73,374	13,740	12,830	11,970	11,000	10,290	9,580	8,870	8,160	7,430	6,700
73,375 - 73,624	13,800	12,890	12,030	11,060	10,350	9,640	8,920	8,210	7,500	6,760
73,625 - 73,874	13,860	12,950	12,090	11,120	10,410	9,690	8,980	8,270	7,560	6,830
73,875 - 74,124	13,920	13,010	12,150	11,180	10,460	9,750	9,040	8,330	7,620	6,890
74,125 - 74,374	13,980	13,070	12,210	11,230	10,520	9,810	9,100	8,390	7,680	6,950
74,375 - 74,624	14,040	13,120	12,270	11,290	10,580	9,870	9,160	8,450	7,740	7,020
74,625 - 74,874	14,100	13,180	12,330	11,350	10,640	9,930	9,220	8,510	7,800	7,080
74,875 - 75,000	14,160	13,240	12,390	11,410	10,700	9,990	9,280	8,570	7,860	7,140
Over 75,000	*** MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM ***									

TABLE B—EXPECTED FAMILY CONTRIBUTION FOR A DEPENDENT STUDENT FROM A ONE-PARENT FAMILY—1986-87

For a dependent student from a one-parent family, the educational institution determines the student's expected family contribution according to Table B. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution.

As used in Table B, "Family members" include the student, the student's spouse and their dependents, and the student's parent and the parent's dependents.

Table B is based on the following assumptions:

- The parent is employed.
- No assets are considered
- All of the family income was earned by the parent.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following—

—Federal income tax, based on standard deductions, computed at the rate applied to taxpayers who qualify as head of households;

—F.I.C.A. (Social Security) for one wage earner;

—Average State and other taxes (8%);

—An employment allowance of 35% of income, to a maximum of $2,000; and

—A Standard Maintenance Allowance based on the average non-discretionary living expenses for families, derived from the Bureau of Labor Statistics low budget standard, and adjusted for inflation and family size. The standard Maintenance Allowance does not include an allowance for the living expenses of the dependent student for the 9 months the student is attending school because the living expenses are included in the student's cost of attendance.

To this balance, called "available income," which represents discretionary income, a conversion percentage is applied. The percentage increases as available income increases. The resulting value is the expected family contribution.

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family--1986-87

Adjusted Gross Income *	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
Less than 30,001	*** AUTOMATICALLY ELIGIBLE ***										
30,001 - 30,124	2,430	1,950	1,450	1,020	520	150	0	0	0	0	0
30,125 - 30,374	2,480	1,990	1,480	1,050	560	180	0	0	0	0	0
30,375 - 30,624	2,520	2,020	1,510	1,080	590	220	0	0	0	0	0
30,625 - 30,874	2,560	2,060	1,550	1,110	620	250	0	0	0	0	0
30,875 - 31,124	2,600	2,100	1,580	1,140	660	280	0	0	0	0	0
31,125 - 31,374	2,650	2,140	1,610	1,170	690	320	0	0	0	0	0
31,375 - 31,624	2,700	2,180	1,640	1,210	720	350	0	0	0	0	0
31,625 - 31,874	2,750	2,220	1,680	1,240	750	380	10	0	0	0	0
31,875 - 32,124	2,800	2,270	1,710	1,270	780	420	40	0	0	0	0
32,125 - 32,374	2,840	2,310	1,750	1,300	810	450	80	0	0	0	0
32,375 - 32,624	2,890	2,350	1,790	1,330	840	480	110	0	0	0	0
32,625 - 32,874	2,930	2,390	1,820	1,360	870	510	140	0	0	0	0
32,875 - 33,124	2,980	2,430	1,860	1,390	910	540	180	0	0	0	0
33,125 - 33,374	3,020	2,470	1,890	1,430	940	570	210	0	0	0	0
33,375 - 33,624	3,070	2,510	1,930	1,460	970	600	240	0	0	0	0
33,625 - 33,874	3,110	2,550	1,960	1,490	1,000	630	270	0	0	0	0
33,875 - 34,124	3,160	2,590	2,000	1,520	1,030	670	300	0	0	0	0
34,125 - 34,374	3,200	2,630	2,030	1,550	1,060	700	330	0	0	0	0
34,375 - 34,624	3,260	2,680	2,070	1,580	1,090	730	360	0	0	0	0
34,625 - 34,874	3,310	2,720	2,110	1,610	1,130	760	400	30	0	0	0
34,875 - 35,124	3,360	2,770	2,150	1,650	1,160	790	430	60	0	0	0
35,125 - 35,374	3,420	2,810	2,180	1,680	1,190	820	460	90	0	0	0
35,375 - 35,624	3,470	2,860	2,220	1,720	1,220	850	490	120	0	0	0
35,625 - 35,874	3,520	2,900	2,260	1,750	1,250	890	520	160	0	0	0
35,875 - 36,124	3,580	2,950	2,300	1,780	1,280	920	550	190	0	0	0
36,125 - 36,374	3,630	2,990	2,340	1,820	1,310	950	580	220	0	0	0
36,375 - 36,624	3,680	3,040	2,380	1,850	1,340	980	610	250	0	0	0
36,625 - 36,874	3,730	3,080	2,410	1,880	1,370	1,010	650	280	0	0	0
36,875 - 37,124	3,790	3,130	2,450	1,920	1,400	1,040	680	310	0	0	0
37,125 - 37,374	3,840	3,170	2,490	1,950	1,430	1,070	710	340	0	0	0
37,375 - 37,624	3,890	3,220	2,530	1,980	1,460	1,100	740	370	10	0	0
37,625 - 37,874	3,950	3,270	2,570	2,020	1,490	1,130	770	410	40	0	0
37,875 - 38,124	4,010	3,330	2,610	2,050	1,520	1,160	800	440	70	0	0
38,125 - 38,374	4,070	3,380	2,660	2,090	1,550	1,190	830	470	100	0	0
38,375 - 38,624	4,130	3,430	2,700	2,120	1,570	1,220	860	500	140	0	0
38,625 - 38,874	4,180	3,490	2,750	2,160	1,600	1,250	890	530	170	0	0
38,875 - 39,124	4,240	3,530	2,790	2,200	1,640	1,280	920	560	200	0	0
39,125 - 39,374	4,300	3,580	2,840	2,240	1,670	1,310	950	590	230	0	0
39,375 - 39,624	4,360	3,630	2,880	2,280	1,700	1,340	980	620	260	0	0
39,625 - 39,874	4,420	3,690	2,930	2,320	1,740	1,370	1,010	660	290	0	0

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
39,875 - 40,124	4,490	3,750	2,980	2,360	1,780	1,400	1,040	690	330	0	0
40,125 - 40,374	4,560	3,800	3,030	2,410	1,810	1,430	1,080	720	360	0	0
40,375 - 40,624	4,620	3,860	3,070	2,450	1,850	1,470	1,110	750	400	30	0
40,625 - 40,874	4,690	3,920	3,120	2,490	1,890	1,500	1,140	790	430	70	0
40,875 - 41,124	4,760	3,990	3,170	2,530	1,930	1,530	1,180	820	460	110	0
41,125 - 41,374	4,830	4,050	3,220	2,580	1,960	1,560	1,210	850	500	140	0
41,375 - 41,624	4,890	4,120	3,280	2,620	2,000	1,600	1,240	890	530	170	0
41,625 - 41,874	4,960	4,190	3,340	2,670	2,040	1,630	1,280	920	560	210	0
41,875 - 42,124	5,030	4,250	3,400	2,720	2,080	1,670	1,310	950	600	240	0
42,125 - 42,374	5,090	4,320	3,450	2,770	2,120	1,710	1,340	990	630	270	0
42,375 - 42,624	5,160	4,390	3,510	2,820	2,160	1,750	1,370	1,020	660	310	0
42,625 - 42,874	5,230	4,450	3,570	2,870	2,200	1,780	1,410	1,050	700	340	0
42,875 - 43,124	5,290	4,520	3,620	2,910	2,240	1,820	1,440	1,080	730	370	20
43,125 - 43,374	5,360	4,590	3,680	2,960	2,280	1,860	1,470	1,120	760	410	50
43,375 - 43,624	5,430	4,650	3,740	3,010	2,320	1,890	1,510	1,150	790	440	80
43,625 - 43,874	5,500	4,720	3,790	3,060	2,370	1,930	1,540	1,180	830	470	120
43,875 - 44,124	5,560	4,790	3,850	3,110	2,410	1,960	1,570	1,220	860	500	150
44,125 - 44,374	5,630	4,860	3,910	3,160	2,450	2,000	1,600	1,250	890	540	180
44,375 - 44,624	5,700	4,920	3,980	3,210	2,490	2,030	1,640	1,280	930	570	210
44,625 - 44,874	5,760	4,990	4,040	3,260	2,530	2,070	1,670	1,320	960	600	250
44,875 - 45,124	5,830	5,060	4,110	3,320	2,570	2,110	1,710	1,350	990	640	280
45,125 - 45,374	5,900	5,120	4,180	3,380	2,620	2,150	1,740	1,380	1,030	670	310
45,375 - 45,624	5,960	5,190	4,240	3,440	2,670	2,200	1,780	1,410	1,060	700	350
45,625 - 45,874	6,030	5,260	4,310	3,490	2,720	2,240	1,820	1,440	1,090	740	380
45,875 - 46,124	6,100	5,320	4,380	3,550	2,770	2,280	1,850	1,470	1,120	770	410
46,125 - 46,374	6,170	5,390	4,440	3,610	2,810	2,320	1,890	1,500	1,160	800	450
46,375 - 46,624	6,230	5,460	4,510	3,660	2,860	2,360	1,920	1,540	1,190	830	480
46,625 - 46,874	6,300	5,530	4,580	3,720	2,910	2,400	1,960	1,570	1,220	870	510
46,875 - 47,124	6,370	5,590	4,650	3,780	2,960	2,440	1,990	1,600	1,250	900	540
47,125 - 47,374	6,430	5,660	4,710	3,830	3,010	2,480	2,030	1,630	1,280	930	580
47,375 - 47,624	6,500	5,730	4,780	3,890	3,060	2,530	2,070	1,670	1,310	960	610
47,625 - 47,874	6,570	5,790	4,850	3,950	3,100	2,570	2,110	1,700	1,340	990	640
47,875 - 48,124	6,630	5,860	4,910	4,020	3,150	2,610	2,150	1,740	1,370	1,030	680
48,125 - 48,374	6,700	5,930	4,980	4,090	3,200	2,660	2,190	1,780	1,410	1,060	710
48,375 - 48,624	6,770	5,990	5,050	4,160	3,260	2,710	2,230	1,810	1,440	1,090	740
48,625 - 48,874	6,830	6,060	5,110	4,220	3,320	2,760	2,270	1,850	1,470	1,120	770
48,875 - 49,124	6,890	6,130	5,180	4,290	3,370	2,810	2,310	1,880	1,500	1,150	800
49,125 - 49,374	6,950	6,200	5,250	4,360	3,430	2,860	2,360	1,920	1,530	1,180	830
49,375 - 49,624	7,010	6,260	5,310	4,420	3,490	2,900	2,400	1,950	1,560	1,210	860
49,625 - 49,874	7,070	6,330	5,380	4,490	3,550	2,950	2,440	1,990	1,590	1,250	900

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
49,875 - 50,124	7,120	6,380	5,450	4,560	3,600	3,000	2,480	2,020	1,630	1,280	930
50,125 - 50,374	7,180	6,440	5,520	4,620	3,660	3,050	2,520	2,060	1,660	1,310	960
50,375 - 50,624	7,240	6,500	5,580	4,690	3,720	3,100	2,560	2,100	1,700	1,340	990
50,625 - 50,874	7,300	6,560	5,650	4,760	3,770	3,150	2,610	2,140	1,730	1,370	1,020
50,875 - 51,124	7,360	6,620	5,710	4,830	3,830	3,200	2,660	2,180	1,770	1,400	1,050
51,125 - 51,374	7,420	6,680	5,760	4,890	3,890	3,250	2,700	2,230	1,810	1,430	1,080
51,375 - 51,624	7,480	6,740	5,820	4,960	3,950	3,310	2,750	2,270	1,840	1,460	1,120
51,625 - 51,874	7,540	6,800	5,880	5,030	4,020	3,370	2,800	2,310	1,880	1,500	1,150
51,875 - 52,124	7,590	6,850	5,940	5,080	4,080	3,420	2,850	2,350	1,910	1,530	1,180
52,125 - 52,374	7,650	6,910	6,000	5,140	4,150	3,480	2,900	2,390	1,950	1,560	1,210
52,375 - 52,624	7,710	6,970	6,060	5,200	4,220	3,540	2,950	2,430	1,980	1,590	1,240
52,625 - 52,874	7,770	7,030	6,120	5,260	4,290	3,600	3,000	2,470	2,020	1,620	1,270
52,875 - 53,124	7,830	7,090	6,180	5,320	4,340	3,650	3,040	2,520	2,060	1,660	1,300
53,125 - 53,374	7,890	7,150	6,230	5,380	4,400	3,710	3,090	2,560	2,100	1,690	1,340
53,375 - 53,624	7,950	7,210	6,290	5,440	4,460	3,770	3,140	2,600	2,140	1,730	1,370
53,625 - 53,874	8,010	7,270	6,350	5,500	4,520	3,820	3,190	2,650	2,180	1,770	1,400
53,875 - 54,124	8,060	7,320	6,410	5,550	4,580	3,870	3,250	2,700	2,220	1,800	1,430
54,125 - 54,374	8,120	7,380	6,470	5,610	4,640	3,930	3,300	2,750	2,260	1,840	1,460
54,375 - 54,624	8,180	7,440	6,530	5,670	4,700	3,990	3,360	2,800	2,300	1,870	1,490
54,625 - 54,874	8,240	7,500	6,590	5,730	4,760	4,040	3,420	2,840	2,340	1,910	1,520
54,875 - 55,124	8,300	7,560	6,690	5,790	4,810	4,100	3,470	2,890	2,390	1,940	1,550
55,125 - 55,374	8,360	7,620	6,700	5,850	4,870	4,160	3,520	2,940	2,430	1,980	1,590
55,375 - 55,624	8,420	7,680	6,760	5,910	4,930	4,220	3,570	2,990	2,470	2,020	1,620
55,625 - 55,874	8,480	7,740	6,820	5,970	4,990	4,280	3,620	3,040	2,510	2,050	1,650
55,875 - 56,124	8,530	7,790	6,880	6,020	5,050	4,340	3,670	3,080	2,550	2,090	1,690
56,125 - 56,374	8,590	7,850	6,940	6,080	5,110	4,400	3,720	3,130	2,600	2,130	1,730
56,375 - 56,624	8,650	7,910	7,000	6,140	5,170	4,460	3,770	3,170	2,640	2,170	1,760
56,625 - 56,874	8,710	7,970	7,060	6,200	5,230	4,510	3,820	3,210	2,690	2,220	1,800
56,875 - 57,124	8,770	8,030	7,120	6,260	5,280	4,570	3,870	3,260	2,740	2,260	1,830
57,125 - 57,374	8,830	8,090	7,170	6,320	5,340	4,630	3,920	3,310	2,780	2,300	1,870
57,375 - 57,624	8,890	8,150	7,230	6,380	5,400	4,690	3,980	3,360	2,820	2,340	1,900
57,625 - 57,874	8,950	8,210	7,290	6,440	5,460	4,750	4,040	3,410	2,870	2,380	1,940
57,875 - 58,124	9,000	8,260	7,350	6,490	5,520	4,810	4,100	3,460	2,910	2,420	1,970
58,125 - 58,374	9,060	8,320	7,410	6,550	5,580	4,870	4,160	3,510	2,950	2,460	2,010
58,375 - 58,624	9,120	8,380	7,470	6,610	5,640	4,930	4,210	3,560	2,990	2,490	2,050
58,625 - 58,874	9,180	8,440	7,530	6,670	5,700	4,980	4,270	3,610	3,040	2,530	2,090
58,875 - 59,124	9,240	8,500	7,590	6,730	5,750	5,040	4,330	3,660	3,080	2,570	2,130
59,125 - 59,374	9,300	8,560	7,640	6,790	5,810	5,100	4,390	3,710	3,120	2,610	2,160
59,375 - 59,624	9,360	8,620	7,700	6,850	5,870	5,160	4,450	3,760	3,160	2,650	2,200
59,625 - 59,874	9,420	8,680	7,760	6,910	5,930	5,220	4,510	3,810	3,210	2,690	2,240

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family—1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
59,875 - 60,124	9,470	8,730	7,820	6,960	5,990	5,280	4,570	3,860	3,260	2,730	2,270
60,125 - 60,374	9,530	8,790	7,880	7,020	6,050	5,340	4,630	3,910	3,310	2,780	2,310
60,375 - 60,624	9,590	8,850	7,940	7,080	6,110	5,400	4,680	3,970	3,360	2,820	2,340
60,625 - 60,874	9,650	8,910	8,000	7,140	6,170	5,450	4,740	4,030	3,410	2,860	2,380
60,875 - 61,124	9,710	8,970	8,060	7,200	6,220	5,510	4,800	4,090	3,460	2,900	2,420
61,125 - 61,374	9,770	9,030	8,110	7,260	6,280	5,570	4,860	4,150	3,510	2,950	2,450
61,375 - 61,624	9,830	9,090	8,170	7,320	6,340	5,630	4,920	4,210	3,560	2,990	2,490
61,625 - 61,874	9,890	9,150	8,230	7,380	6,400	5,690	4,980	4,270	3,610	3,030	2,530
61,875 - 62,124	9,940	9,200	8,290	7,430	6,460	5,750	5,040	4,330	3,660	3,070	2,560
62,125 - 62,374	10,000	9,260	8,350	7,490	6,520	5,810	5,100	4,380	3,710	3,120	2,600
62,375 - 62,624	10,060	9,320	8,410	7,550	6,580	5,870	5,150	4,440	3,760	3,160	2,640
62,625 - 62,874	10,120	9,380	8,470	7,610	6,640	5,920	5,210	4,500	3,810	3,200	2,690
62,875 - 63,124	10,180	9,440	8,530	7,670	6,690	5,980	5,270	4,560	3,860	3,250	2,730
63,125 - 63,374	10,240	9,500	8,580	7,730	6,750	6,040	5,330	4,620	3,910	3,300	2,770
63,375 - 63,624	10,300	9,560	8,640	7,790	6,810	6,100	5,390	4,680	3,970	3,350	2,810
63,625 - 63,874	10,360	9,620	8,700	7,850	6,870	6,160	5,450	4,740	4,030	3,400	2,860
63,875 - 64,124	10,410	9,670	8,760	7,900	6,930	6,220	5,510	4,800	4,080	3,450	2,900
64,125 - 64,374	10,470	9,730	8,820	7,960	6,990	6,280	5,570	4,850	4,140	3,500	2,940
64,375 - 64,624	10,530	9,790	8,880	8,020	7,050	6,340	5,620	4,910	4,200	3,550	2,980
64,625 - 64,874	10,590	9,850	8,940	8,080	7,110	6,390	5,680	4,970	4,260	3,600	3,030
64,875 - 65,124	10,650	9,910	9,000	8,140	7,160	6,450	5,740	5,030	4,320	3,650	3,070
65,125 - 65,374	10,710	9,970	9,050	8,200	7,220	6,510	5,800	5,090	4,380	3,700	3,110
65,375 - 65,624	10,760	10,030	9,110	8,260	7,280	6,570	5,860	5,150	4,440	3,750	3,150
65,625 - 65,874	10,820	10,090	9,170	8,320	7,340	6,630	5,920	5,210	4,500	3,800	3,200
65,875 - 66,124	10,870	10,140	9,230	8,370	7,400	6,690	5,980	5,270	4,550	3,850	3,250
66,125 - 66,374	10,930	10,200	9,290	8,430	7,460	6,750	6,040	5,320	4,610	3,900	3,300
66,375 - 66,624	10,980	10,260	9,350	8,490	7,520	6,810	6,090	5,380	4,670	3,960	3,350
66,625 - 66,874	11,040	10,310	9,410	8,550	7,580	6,860	6,150	5,440	4,730	4,020	3,400
66,875 - 67,124	11,090	10,370	9,470	8,610	7,630	6,920	6,210	5,500	4,790	4,080	3,450
67,125 - 67,374	11,150	10,420	9,520	8,670	7,690	6,980	6,270	5,560	4,850	4,140	3,500
67,375 - 67,624	11,200	10,480	9,580	8,730	7,750	7,040	6,330	5,620	4,910	4,200	3,550
67,625 - 67,874	11,260	10,530	9,640	8,790	7,810	7,100	6,390	5,680	4,970	4,260	3,600
67,875 - 68,124	11,310	10,590	9,690	8,840	7,870	7,160	6,450	5,740	5,020	4,310	3,650
68,125 - 68,374	11,370	10,640	9,750	8,900	7,930	7,220	6,510	5,790	5,080	4,370	3,700
68,375 - 68,624	11,420	10,700	9,800	8,960	7,990	7,280	6,560	5,850	5,140	4,430	3,750
68,625 - 68,874	11,480	10,750	9,860	9,010	8,050	7,330	6,620	5,910	5,200	4,490	3,800
68,875 - 69,124	11,530	10,810	9,910	9,070	8,100	7,390	6,680	5,970	5,260	4,550	3,850
69,125 - 69,374	11,590	10,870	9,970	9,120	8,160	7,450	6,740	6,030	5,320	4,610	3,900
69,375 - 69,624	11,640	10,920	10,020	9,180	8,220	7,510	6,800	6,090	5,380	4,670	3,960
69,625 - 69,874	11,700	10,980	10,080	9,230	8,270	7,570	6,860	6,150	5,440	4,730	4,010

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
69,875 - 70,124	11,760	11,030	10,130	9,290	8,330	7,630	6,920	6,210	5,490	4,780	4,070
70,125 - 70,374	11,810	11,090	10,190	9,350	8,390	7,690	6,980	6,260	5,550	4,840	4,130
70,375 - 70,624	11,870	11,140	10,240	9,400	8,440	7,740	7,030	6,320	5,610	4,900	4,190
70,625 - 70,874	11,920	11,200	10,300	9,460	8,500	7,800	7,090	6,380	5,670	4,960	4,250
70,875 - 71,124	11,980	11,250	10,350	9,510	8,550	7,850	7,150	6,440	5,730	5,020	4,310
71,125 - 71,374	12,030	11,310	10,410	9,570	8,610	7,910	7,210	6,500	5,790	5,080	4,370
71,375 - 71,624	12,090	11,360	10,460	9,620	8,660	7,960	7,270	6,560	5,850	5,140	4,430
71,625 - 71,874	12,140	11,420	10,520	9,680	8,720	8,020	7,320	6,620	5,910	5,200	4,480
71,875 - 72,124	12,200	11,470	10,570	9,730	8,770	8,080	7,380	6,680	5,960	5,250	4,540
72,125 - 72,374	12,250	11,530	10,630	9,790	8,830	8,130	7,430	6,730	6,020	5,310	4,600
72,375 - 72,624	12,310	11,580	10,680	9,840	8,880	8,190	7,490	6,790	6,080	5,370	4,660
72,625 - 72,874	12,360	11,640	10,740	9,900	8,940	8,240	7,540	6,850	6,140	5,430	4,720
72,875 - 73,124	12,420	11,690	10,790	9,950	8,990	8,300	7,600	6,900	6,200	5,490	4,780
73,125 - 73,374	12,470	11,750	10,850	10,010	9,050	8,350	7,650	6,960	6,260	5,550	4,840
73,375 - 73,624	12,530	11,800	10,910	10,060	9,100	8,410	7,710	7,010	6,320	5,610	4,900
73,625 - 73,874	12,580	11,860	10,960	10,120	9,160	8,460	7,770	7,070	6,370	5,670	4,950
73,875 - 74,124	12,640	11,910	11,020	10,170	9,210	8,520	7,820	7,120	6,430	5,720	5,010
74,425 - 74,374	12,690	11,970	11,070	10,230	9,270	8,570	7,880	7,180	6,480	5,780	5,070
74,375 - 74,624	12,750	12,020	11,130	10,280	9,320	8,630	7,930	7,230	6,540	5,840	5,130
74,625 - 74,874	12,800	12,080	11,180	10,340	9,380	8,680	7,990	7,290	6,590	5,900	5,190
74,875 - 75,000	12,860	12,140	11,240	10,390	9,430	8,740	8,040	7,340	6,650	5,950	5,250
Over 75,000	*** MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM ***										

TABLE C—EXPECTED FAMILY CONTRIBUTION FOR A MARRIED INDEPENDENT STUDENT—1986-87

For a married independent student, the education institution determines the student's expected family contribution according to Table C. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary education institution. The contributions set forth in Table C are based on a 12-month budget. If an educational institution calculates an independent student budget on a 9-month basis, it must multiply the contribution in the table by .75. No family assets are considered.

As used in Table C, "Family members" include the student, the student's spouse and their dependents.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following:

—Federal income tax, based on standard deductions, computed at the rate applied to married taxpayers filing joint returns;
—F.I.C.A. (Social Security) for one wage earner; and
—Average State and other taxes (4%).

The resulting value is the expected family contribution. No deduction is made for living expenses of the student and his or her family because those expenses are included in the student's cost of attendance.

Table C: Expected Family Contribution for a Married Independent Student--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
Less than 30,001	*** AUTOMATICALLY ELIGIBLE ***										
30,001 - 30,124	22,500	22,760	23,020	23,260	23,480	23,710	23,940	24,160	24,340	24,530	24,720
30,125 - 30,374	22,660	22,920	23,180	23,420	23,650	23,880	24,110	24,330	24,520	24,710	24,890
30,375 - 30,624	22,820	23,080	23,340	23,590	23,820	24,050	24,280	24,510	24,700	24,880	25,070
30,625 - 30,874	22,980	23,240	23,500	23,760	23,990	24,220	24,440	24,670	24,870	25,060	25,250
30,875 - 31,124	23,140	23,400	23,660	23,920	24,150	24,380	24,610	24,840	25,050	25,240	25,430
31,125 - 31,374	23,300	23,560	23,820	24,080	24,320	24,550	24,780	25,010	25,230	25,420	25,600
31,375 - 31,624	23,460	23,720	23,980	24,240	24,490	24,720	24,950	25,170	25,400	25,590	25,780
31,625 - 31,874	23,620	23,880	24,140	24,400	24,660	24,880	25,110	25,340	25,570	25,770	25,960
31,875 - 32,124	23,780	24,040	24,300	24,560	24,820	25,050	25,280	25,510	25,740	25,950	26,140
32,125 - 32,374	23,940	24,200	24,460	24,720	24,980	25,220	25,450	25,680	25,910	26,130	26,310
32,375 - 32,624	24,100	24,360	24,620	24,880	25,140	25,390	25,620	25,840	26,070	26,300	26,490
32,625 - 32,874	24,260	24,520	24,780	25,040	25,300	25,550	25,780	26,010	26,240	26,470	26,670
32,875 - 33,124	24,420	24,680	24,940	25,200	25,460	25,720	25,950	26,180	26,410	26,640	26,850
33,125 - 33,374	24,580	24,840	25,100	25,360	25,620	25,880	26,120	26,350	26,580	26,800	27,020
33,375 - 33,624	24,730	25,000	25,260	25,520	25,780	26,040	26,290	26,510	26,740	26,970	27,200
33,625 - 33,874	24,880	25,160	25,420	25,680	25,940	26,200	26,450	26,680	26,910	27,140	27,370
33;875 - 34,124	25,030	25,320	25,580	25,840	26,100	26,360	26,620	26,850	27,080	27,310	27,540
34,125 - 34,374	25,190	25,480	25,740	26,000	26,260	26,520	26,780	27,020	27,240	27,470	27,700
34,375 - 34,624	25,340	25,630	25,900	26,160	26,420	26,680	26,940	27,180	27,410	27,640	27,870
34,625 - 34,874	25,490	25,780	26,060	26,320	26,580	26,840	27,100	27,350	27,580	27,810	28,040
34,875 - 35,124	25,640	25,930	26,220	26,480	26,740	27,000	27,260	27,520	27,750	27,980	28,200
35,125 - 35,374	25,800	26,090	26,380	26,640	26,900	27,160	27,420	27,680	27,910	28,140	28,370
35,375 - 35,624	25,950	26,240	26,530	26,800	27,060	27,320	27,580	27,840	28,080	28,310	28,540
35,625 - 35,874	26,100	26,390	26,680	26,960	27,220	27,480	27,740	28,000	28,250	28,480	28,710
35,875 - 36,124	26,250	26,540	26,830	27,120	27,380	27,640	27,900	28,160	28,420	28,650	28,870
36,125 - 36,374	26,400	26,700	26,990	27,280	27,540	27,800	28,060	28,320	28,580	28,810	29,040
36,375 - 36,624	26,560	26,850	27,140	27,430	27,700	27,960	28,220	28,480	28,740	28,980	29,710
36,625 - 36,874	26,710	27,000	27,290	27,580	27,860	28,120	28,380	28,640	28,900	29,150	29,380
36,875 - 37,124	26,860	27,150	27,440	27,740	28,020	28,280	28,540	28,800	29,060	29,310	29,540
37,125 - 37,374	27,010	27,310	27,600	27,890	28,180	28,440	28,700	28,960	29,220	29,480	29,710
37,375 - 37,624	27,170	27,460	27,750	28,040	28,330	28,600	28,860	29,120	29,380	29,640	29,880
37,625 - 37,874	27,320	27,610	27,900	28,190	28,480	28,760	29,020	29,280	29,540	29,800	30,050
37,875 - 38,124	27,470	27,760	28,050	28,350	28,640	28,920	29,180	29,440	29,700	29,960	30,210
38,125 - 38,374	27,620	27,910	28,210	28,500	28,790	29,080	29,340	29,600	29,860	30,120	30,380
38,375 - 38,624	27,780	28,070	28,360	28,650	28,940	29,230	29,500	29,760	30,020	30,280	30,540
38,625 - 38,874	27,930	28,220	28,510	28,800	29,090	29,380	29,660	29,920	30,180	30,440	30,700
38,875 - 39,124	28,070	28,370	28,660	28,950	29,250	29,540	29,810	30,070	30,330	30,590	30,850
39,125 - 39,374	28,210	28,520	28,820	29,110	29,400	29,690	29,970	30,230	30,490	30,750	31,010
39,375 - 39,624	28,350	28,680	28,970	29,260	29,550	29,840	30,130	30,390	30,650	30,910	31,170
39,625 - 39,874	28,500	28,840	29,130	29,420	29,710	30,000	30,300	30,560	30,820	31,080	31,340

Table C: Expected Family Contribution for a Married Independent Student—1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
39,875 - 40,124	28,650	29,000	29,300	29,590	29,880	30,170	30,470	30,740	31,000	31,260	31,520
40,125 - 40,374	28,810	29,150	29,470	29,760	30,050	30,340	30,640	30,920	31,180	31,440	31,700
40,375 - 40,624	28,970	29,310	29,640	29,930	30,220	30,510	30,810	31,100	31,360	31,620	31,880
40,625 - 40,874	29,130	29,470	29,810	30,100	30,390	30,680	30,980	31,270	31,530	31,790	32,050
40,875 - 41,124	29,280	29,630	29,970	30,270	30,560	30,850	31,150	31,440	31,710	31,970	32,230
41,125 - 41,374	29,440	29,780	30,130	30,440	30,730	31,020	31,320	31,610	31,890	32,150	32,410
41,375 - 41,624	29,600	29,940	30,290	30,610	30,900	31,190	31,490	31,780	32,070	32,330	32,590
41,625 - 41,874	29,760	30,100	30,440	30,780	31,070	31,360	31,660	31,950	32,240	32,500	32,760
41,875 - 42,124	29,910	30,260	30,600	30,940	31,240	31,530	31,830	32,120	32,410	32,680	32,940
42,125 - 42,374	30,070	30,410	30,760	31,100	31,410	31,700	32,000	32,290	32,580	32,860	33,120
42,375 - 42,624	30,230	30,570	30,920	31,260	31,580	31,870	32,170	32,460	32,750	33,040	33,300
42,625 - 42,874	30,390	30,730	31,070	31,420	31,750	32,040	32,340	32,630	32,920	33,210	33,470
42,875 - 43,124	30,540	30,890	31,230	31,570	31,920	32,210	32,510	32,800	33,090	33,380	33,650
43,125 - 43,374	30,700	31,040	31,390	31,730	32,070	32,380	32,680	32,970	33,260	33,550	33,830
43,375 - 43,624	30,860	31,200	31,550	31,890	32,230	32,550	32,850	33,140	33,430	33,720	34,010
43,625 - 43,874	31,020	31,360	31,700	32,050	32,390	32,720	33,020	33,310	33,600	33,890	34,180
43,875 - 44,124	31,170	31,520	31,860	32,200	32,550	32,890	33,190	33,480	33,770	34,060	34,350
44,125 - 44,374	31,330	31,670	32,020	32,360	32,700	33,050	33,360	33,650	33,940	34,230	34,520
44,375 - 44,624	31,490	31,830	32,180	32,520	32,860	33,200	33,530	33,820	34,110	34,400	34,690
44,625 - 44,874	31,650	31,990	32,330	32,680	33,020	33,360	33,700	33,990	34,280	34,570	34,860
44,875 - 45,124	31,800	32,150	32,490	32,830	33,180	33,520	33,860	34,160	34,450	34,740	35,030
45,125 - 45,374	31,960	32,300	32,650	32,990	33,330	33,680	34,020	34,330	34,620	34,910	35,200
45,375 - 45,624	32,120	32,460	32,810	33,150	33,490	33,830	34,180	34,500	34,790	35,080	35,370
45,625 - 45,874	32,280	32,620	32,960	33,310	33,650	33,990	34,340	34,670	34,960	35,250	35,540
45,875 - 46,124	32,430	32,780	33,120	33,460	33,810	34,150	34,490	34,840	35,130	35,420	35,710
46,125 - 46,374	32,590	32,930	33,280	33,620	33,960	34,310	34,650	34,990	35,300	35,590	35,880
46,375 - 46,624	32,750	33,090	33,440	33,780	34,120	34,460	34,810	35,150	35,470	35,760	36,050
46,625 - 46,874	32,910	33,250	33,590	33,940	34,280	34,620	34,970	35,310	35,640	35,930	36,220
46,875 - 47,124	33,060	33,410	33,750	34,090	34,440	34,780	35,120	35,470	35,810	36,100	36,390
47,125 - 47,374	33,220	33,560	33,910	34,250	34,590	34,940	35,280	35,620	35,970	36,270	36,560
47,375 - 47,624	33,380	33,720	34,070	34,410	34,750	35,090	35,440	35,780	36,120	36,440	36,730
47,625 - 47,874	33,540	33,880	34,220	34,570	34,910	35,250	35,600	35,940	36,280	36,610	36,900
47,875 - 48,124	33,690	34,040	34,380	34,720	35,070	35,410	35,750	36,100	36,440	36,780	37,070
48,125 - 48,374	33,850	34,190	34,540	34,880	35,220	35,570	35,910	36,250	36,600	36,940	37,240
48,375 - 48,624	34,010	34,350	34,700	35,040	35,380	35,720	36,070	36,410	36,750	37,100	37,410
48,625 - 48,874	34,170	34,510	34,850	35,200	35,540	35,880	36,230	36,570	36,910	37,260	37,580
48,875 - 49,124	34,320	34,670	35,010	35,350	35,700	36,040	36,380	36,730	37,070	37,410	37,750
49,125 - 49,374	34,480	34,820	35,170	35,510	35,850	36,200	36,540	36,880	37,230	37,570	37,910
49,375 - 49,624	34,640	34,980	35,330	35,670	36,010	36,350	36,700	37,040	37,380	37,730	38,070
49,625 - 49,874	34,800	35,140	35,480	35,830	36,170	36,510	36,860	37,200	37,540	37,890	38,230

Table C: Expected Family Contribution for a Married Independent Student--1986-87

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
49,875 - 50,124	34,940	35,300	35,640	35,980	36,330	36,670	37,010	37,360	37,700	38,040	38,390
50,125 - 50,374	35,090	35,450	35,800	36,140	36,480	36,830	37,170	37,510	37,860	38,200	38,540
50,375 - 50,624	35,230	35,610	35,960	36,300	36,640	36,980	37,330	37,670	38,010	38,360	38,700
50,625 - 50,874	35,380	35,770	36,110	36,460	36,800	37,140	37,490	37,830	38,170	38,520	38,860
50,875 - 51,124	35,520	35,920	36,270	36,610	36,960	37,300	37,640	37,990	38,330	38,670	39,020
51,125 - 51,374	35,670	36,060	36,430	36,770	37,110	37,460	37,800	38,140	38,490	38,830	39,170
51,375 - 51,624	35,810	36,210	36,590	36,930	37,270	37,610	37,960	38,300	38,640	38,990	39,330
51,625 - 51,874	35,960	36,350	36,740	37,090	37,430	37,770	38,120	38,460	38,800	39,150	39,490
51,875 - 52,124	36,100	36,500	36,890	37,240	37,590	37,930	38,270	38,620	38,960	39,300	39,650
52,125 - 52,374	36,250	36,640	37,040	37,400	37,740	38,090	38,430	38,770	39,120	39,460	39,800
52,375 - 52,624	36,390	36,790	37,180	37,560	37,900	38,240	38,590	38,930	39,270	39,620	39,960
52,625 - 52,874	36,540	36,930	37,330	37,720	38,060	38,400	38,750	39,090	39,430	39,780	40,120
52,875 - 53,124	36,680	37,080	37,470	37,870	38,220	38,560	38,900	39,250	39,590	39,930	40,280
53,125 - 53,374	36,830	37,220	37,620	38,010	38,370	38,720	39,060	39,400	39,750	40,090	40,430
53,375 - 53,624	36,970	37,370	37,760	38,160	38,530	38,870	39,220	39,560	39,900	40,250	40,590
53,625 - 53,874	37,120	37,510	37,910	38,300	38,690	39,030	39,380	39,720	40,060	40,410	40,750
53,875 - 54,124	37,260	37,660	38,050	38,450	38,840	39,190	39,530	39,880	40,220	40,560	40,910
54,125 - 54,374	37,410	37,800	38,200	38,590	38,990	39,350	39,690	40,030	40,380	40,720	41,060
54,375 - 54,624	37,550	37,950	38,340	38,740	39,130	39,500	39,850	40,190	40,530	40,880	41,220
54,625 - 54,874	37,700	38,090	38,490	38,880	39,280	39,660	40,010	40,350	40,690	41,040	41,380
54,875 - 55,124	37,840	38,240	38,630	39,030	39,420	39,820	40,160	40,510	40,850	41,190	41,540
55,125 - 55,374	37,990	38,380	38,780	39,170	39,570	39,960	40,320	40,660	41,010	41,350	41,690
55,375 - 55,624	38,130	38,530	38,920	39,320	39,710	40,110	40,480	40,820	41,160	41,510	41,850
55,625 - 55,874	38,280	38,670	39,070	39,460	39,860	40,250	40,640	40,980	41,320	41,670	42,010
55,875 - 56,124	38,420	38,820	39,210	39,610	40,000	40,400	40,790	41,140	41,480	41,820	42,170
56,125 - 56,374	38,570	38,960	39,360	39,750	40,150	40,540	40,940	41,290	41,640	41,980	42,320
56,375 - 56,624	38,710	39,110	39,500	39,900	40,290	40,690	41,080	41,450	41,790	42,140	42,480
56,625 - 56,874	38,860	39,250	39,650	40,040	40,440	40,830	41,230	41,610	41,950	42,300	42,640
56,875 - 57,124	39,000	39,400	39,790	40,190	40,580	40,980	41,370	41,770	42,110	42,450	42,800
57,125 - 57,374	39,150	39,540	39,940	40,330	40,730	41,120	41,520	41,910	42,270	42,610	42,950
57,375 - 57,624	39,290	39,690	40,080	40,480	40,870	41,270	41,660	42,060	42,420	42,770	43,110
57,625 - 57,874	39,440	39,830	40,230	40,620	41,020	41,410	41,810	42,200	42,580	42,930	43,270
57,875 - 58,124	39,580	39,980	40,370	40,770	41,160	41,560	41,950	42,350	42,740	43,080	43,430
58,125 - 58,374	39,730	40,120	40,520	40,910	41,310	41,700	42,100	42,490	42,890	43,240	43,580
58,375 - 58,624	39,870	40,270	40,660	41,060	41,450	41,850	42,240	42,640	43,030	43,400	43,740
58,625 - 58,874	40,020	40,410	40,810	41,200	41,600	41,990	42,390	42,780	43,180	43,560	43,900
58,875 - 59,124	40,160	40,560	40,950	41,350	41,740	42,140	42,530	42,930	43,320	43,710	44,060
59,125 - 59,374	40,310	40,700	41,100	41,490	41,890	42,280	42,680	43,070	43,470	43,860	44,210
59,375 - 59,624	40,450	40,850	41,240	41,640	42,030	42,430	42,820	43,220	43,610	44,010	44,370
59,625 - 59,874	40,600	40,990	41,390	41,780	42,180	42,570	42,970	43,360	43,760	44,150	44,530

Table C: Expected Family Contribution for a Married Independent Student--1986-87

Adjusted Gross Income	Number of Family Members 2	3	4	5	6	7	8	9	10	11	12
59,875 - 60,124	40,740	41,140	41,530	41,930	42,320	42,720	43,110	43,510	43,900	44,300	44,690
60,125 - 60,374	40,890	41,280	41,680	42,070	42,470	42,860	43,260	43,650	44,050	44,440	44,840
60,375 - 60,624	41,030	41,430	41,820	42,220	42,610	43,010	43,400	43,800	44,190	44,590	44,980
60,625 - 60,874	41,180	41,570	41,970	42,360	42,760	43,150	43,550	43,940	44,340	44,730	45,130
60,875 - 61,124	41,320	41,720	42,110	42,510	42,900	43,300	43,690	44,090	44,480	44,880	45,270
61,125 - 61,374	41,470	41,860	42,260	42,650	43,050	43,440	43,840	44,230	44,630	45,020	45,420
61,375 - 61,624	41,610	42,010	42,400	42,800	43,190	43,590	43,980	44,380	44,770	45,170	45,560
61,625 - 61,874	41,760	42,150	42,550	42,940	43,340	43,730	44,130	44,520	44,920	45,310	45,710
61,875 - 62,124	41,900	42,300	42,690	43,090	43,480	43,880	44,270	44,670	45,060	45,460	45,850
62,125 - 62,374	42,050	42,440	42,840	43,230	43,630	44,020	44,420	44,810	45,210	45,600	46,000
62,375 - 62,624	42,190	42,590	42,980	43,380	43,770	44,170	44,560	44,960	45,350	45,750	46,140
62,625 - 62,874	42,340	42,730	43,130	43,520	43,920	44,310	44,710	45,100	45,500	45,890	46,290
62,875 - 63,124	42,480	42,880	43,270	43,670	44,060	44,460	44,850	45,250	45,640	46,040	46,430
63,125 - 63,374	42,630	43,020	43,420	43,810	44,210	44,600	45,000	45,390	45,790	46,180	46,580
63,375 - 63,624	42,770	43,170	43,560	43,960	44,350	44,750	45,140	45,540	45,930	46,330	46,720
63,625 - 63,874	42,920	43,310	43,710	44,100	44,500	44,890	45,290	45,680	46,080	46,470	46,870
63,875 - 64,124	43,060	43,460	43,850	44,250	44,640	45,040	45,430	45,830	46,220	46,620	47,010
64,125 - 64,374	43,210	43,600	44,000	44,390	44,790	45,180	45,580	45,970	46,370	46,760	47,160
64,375 - 64,624	43,350	43,750	44,140	44,540	44,930	45,330	45,720	46,120	46,510	46,910	47,300
64,625 - 64,874	43,490	43,890	44,290	44,680	45,080	45,470	45,870	46,260	46,660	47,050	47,450
64,875 - 65,124	43,620	44,040	44,430	44,830	45,220	45,620	46,010	46,410	46,800	47,200	47,590
65,125 - 65,374	43,760	44,180	44,580	44,970	45,370	45,760	46,160	46,550	46,950	47,340	47,740
65,375 - 65,624	43,890	44,330	44,720	45,120	45,510	45,910	46,300	46,700	47,090	47,490	47,880
65,625 - 65,874	44,030	44,460	44,870	45,260	45,660	46,050	46,450	46,840	47,240	47,630	48,030
65,875 - 66,124	44,160	44,600	45,010	45,410	45,800	46,200	46,590	46,990	47,380	47,780	48,170
66,125 - 66,374	44,300	44,730	45,160	45,550	45,950	46,340	46,740	47,130	47,530	47,920	48,320
66,375 - 66,624	44,430	44,870	45,300	45,700	46,090	46,490	46,880	47,280	47,670	48,070	48,460
66,625 - 66,874	44,570	45,000	45,440	45,840	46,240	46,630	47,030	47,420	47,820	48,210	48,610
66,875 - 67,124	44,700	45,140	45,580	45,990	46,380	46,780	47,170	47,570	47,960	48,360	48,750
67,125 - 67,374	44,840	45,270	45,710	46,130	46,530	46,920	47,320	47,710	48,110	48,500	48,900
67,375 - 67,624	44,970	45,410	45,850	46,280	46,670	47,070	47,460	47,860	48,250	48,650	49,040
67,625 - 67,874	45,110	45,540	45,980	46,420	46,820	47,210	47,610	48,000	48,400	48,790	49,190
67,875 - 68,124	45,240	45,680	46,120	46,550	46,960	47,360	47,750	48,150	48,540	48,940	49,330
68,125 - 68,374	45,380	45,810	46,250	46,690	47,110	47,500	47,900	48,290	48,690	49,080	49,480
68,375 - 68,624	45,510	45,950	46,390	46,820	47,250	47,650	48,040	48,440	48,830	49,230	49,620
68,625 - 68,874	45,650	46,080	46,520	46,960	47,390	47,790	48,190	48,580	48,980	49,370	49,770
68,875 - 69,124	45,780	46,220	46,660	47,090	47,530	47,940	48,330	48,730	49,120	49,520	49,910
69,125 - 69,374	45,920	46,350	46,790	47,230	47,660	48,080	48,480	48,870	49,270	49,660	50,060
69,375 - 69,624	46,050	46,490	46,930	47,360	47,800	48,230	48,620	49,020	49,410	49,810	50,200
69,625 - 69,874	46,190	46,620	47,060	47,500	47,930	48,370	48,770	49,160	49,560	49,950	50,350

Table C: Expected Family Contribution for a Married Independent Student--1986-87

Adjusted Gross Income	Number of Family Members 2	3	4	5	6	7	8	9	10	11	12
69,875 - 70,124	46,320	46,760	47,200	47,630	48,070	48,510	48,910	49,310	49,700	50,100	50,490
70,125 - 70,374	46,460	46,890	47,330	47,770	48,200	48,640	49,060	49,450	49,850	50,240	50,640
70,375 - 70,624	46,590	47,030	47,470	47,900	48,340	48,780	49,200	49,600	49,990	50,390	50,780
70,625 - 70,874	46,730	47,160	47,600	48,040	48,470	48,910	49,350	49,740	50,140	50,530	50,930
70,875 - 71,124	46,860	47,300	47,740	48,170	48,610	49,050	49,480	49,890	50,280	50,680	51,070
71,125 - 71,374	47,000	47,430	47,870	48,310	48,740	49,180	49,620	50,030	50,430	50,820	51,220
71,375 - 71,624	47,130	47,570	48,010	48,440	48,880	49,320	49,750	50,180	50,570	50,970	51,360
71,625 - 71,874	47,270	47,700	48,140	48,580	49,010	49,450	49,890	50,320	50,720	51,110	51,510
71,875 - 72,124	47,400	47,840	48,280	48,710	49,150	49,590	50,020	50,460	50,860	51,260	51,650
72,125 - 72,374	47,540	47,970	48,410	48,850	49,280	49,720	50,160	50,600	51,010	51,400	51,800
72,375 - 72,624	47,670	48,110	48,550	48,980	49,420	49,860	50,290	50,730	51,150	51,550	51,940
72,625 - 72,874	47,810	48,240	48,680	49,120	49,550	49,990	50,430	50,870	51,300	51,690	52,090
72,875 - 73,124	47,940	48,380	48,820	49,250	49,690	50,130	50,560	51,000	51,440	51,840	52,230
73,125 - 73,374	48,080	48,510	48,950	49,390	49,820	50,260	50,700	51,140	51,570	51,980	52,380
73,375 - 73,624	48,210	48,650	49,090	49,520	49,960	50,400	50,830	51,270	51,710	52,130	52,520
73,625 - 73,874	48,350	48,780	49,220	49,660	50,090	50,530	50,970	51,410	51,840	52,270	52,670
73,875 - 74,124	48,480	48,920	49,360	49,790	50,230	50,670	51,100	51,540	51,980	52,410	52,810
74,125 - 74,374	48,620	49,050	49,490	49,930	50,360	50,800	51,240	51,680	52,110	52,550	52,960
74,375 - 74,624	48,750	49,190	49,630	50,060	50,500	50,940	51,370	51,810	52,250	52,680	53,100
74,625 - 74,874	48,890	49,320	49,760	50,200	50,630	51,070	51,510	51,950	52,380	52,820	53,250
74,875 - 75,000	49,020	49,460	49,900	50,330	50,770	51,210	51,640	52,080	52,520	52,950	53,390
Over 75,000	*** MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM ***										

TABLE D—EXPECTED FAMILY CONTRIBUTION FOR A SINGLE INDEPENDENT STUDENT—1986-87

For a single independent student, the educational institution determines the student's expected family contribution according to Table D. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution. The contributions set forth in Table D are based on a 12-month budget. If an educational institution calculates an independent student budget on a 9-month basis, it must multiply the contribution in the table by .75. No family assets are considered.

As used in Table D, "Family members" include the student and the student's dependents.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following:

—Federal income tax, based on standard deductions, computed at the rate applied to taxpayers who qualify as heads of households;

—F.I.C.A. (Social Security) for one wage earner; and

—Average State and other taxes (4%).

The resulting value is the expected family contribution. No deduction is made for living expenses for the student and his or her family because those expenses are included in the student's cost of attendance.

Table D: Expected Family Contribution for a Single Independent Student--1986-87

Adjusted Gross Income	Number of Family Members 1	2	3	4	5	6	7	8	9	10	11	12
Less than 30,001	*** AUTOMATICALLY ELIGIBLE ***											
30,001 - 30,124	21,460	21,750	22,050	22,340	22,630	22,890	23,140	23,390	23,640	23,890	24,120	24,330
30,125 - 30,374	21,610	21,910	22,200	22,490	22,780	23,050	23,300	23,550	23,800	24,050	24,300	24,500
30,375 - 30,624	21,770	22,060	22,350	22,640	22,930	23,220	23,460	23,710	23,960	24,210	24,460	24,680
30,625 - 30,874	21,920	22,210	22,500	22,790	23,080	23,380	23,630	23,880	24,130	24,380	24,630	24,850
30,875 - 31,124	22,070	22,360	22,650	22,950	23,240	23,530	23,790	24,040	24,290	24,540	24,790	25,020
31,125 - 31,374	22,210	22,520	22,810	23,100	23,390	23,680	23,950	24,200	24,450	24,700	24,950	25,190
31,375 - 31,624	22,360	22,670	22,960	23,250	23,540	23,830	24,110	24,360	24,610	24,860	25,110	25,360
31,625 - 31,874	22,500	22,820	23,110	23,400	23,690	23,990	24,280	24,530	24,780	25,030	25,280	25,520
31,875 - 32,124	22,640	22,970	23,260	23,560	23,850	24,140	24,430	24,690	24,940	25,190	25,440	25,690
32,125 - 32,374	22,780	23,120	23,420	23,710	24,000	24,290	24,580	24,850	25,100	25,350	25,600	25,850
32,375 - 32,624	22,930	23,260	23,570	23,860	24,150	24,440	24,730	25,010	25,260	25,510	25,760	26,010
32,625 - 32,874	23,070	23,400	23,720	24,010	24,300	24,590	24,890	25,180	25,430	25,680	25,920	26,170
32,875 - 33,124	23,210	23,540	23,870	24,160	24,460	24,750	25,040	25,330	25,590	25,840	26,090	26,340
33,125 - 33,374	23,350	23,690	24,020	24,320	24,610	24,900	25,190	25,480	25,750	26,000	26,250	26,500
33,375 - 33,624	23,500	23,830	24,160	24,470	24,760	25,050	25,340	25,630	25,910	26,160	26,410	26,660
33,625 - 33,874	23,640	23,970	24,300	24,620	24,910	25,200	25,500	25,790	26,080	26,320	26,570	26,820
33,875 - 34,124	23,780	24,110	24,450	24,770	25,070	25,360	25,650	25,940	26,230	26,490	26,740	26,990
34,125 - 34,374	23,920	24,260	24,590	24,920	25,220	25,510	25,800	26,090	26,380	26,650	26,900	27,150
34,375 - 34,624	24,070	24,400	24,730	25,060	25,370	25,660	25,950	26,240	26,530	26,810	27,060	27,310
34,625 - 34,874	24,210	24,540	24,870	25,210	25,520	25,810	26,100	26,400	26,690	26,970	27,220	27,470
34,875 - 35,124	24,350	24,680	25,020	25,350	25,670	25,970	26,260	26,550	26,840	27,130	27,390	27,640
35,125 - 35,374	24,490	24,830	25,160	25,490	25,820	26,120	26,410	26,700	26,990	27,280	27,550	27,800
35,375 - 35,624	24,640	24,970	25,300	25,630	25,970	26,270	26,560	26,850	27,140	27,440	27,710	27,960
35,625 - 35,874	24,780	25,110	25,440	25,780	26,110	26,420	26,710	27,010	27,300	27,590	27,870	28,120
35,875 - 36,124	24,920	25,250	25,590	25,920	26,250	26,580	26,870	27,160	27,450	27,740	28,030	28,290
36,125 - 36,374	25,060	25,400	25,730	26,060	26,390	26,730	27,020	27,310	27,600	27,890	28,180	28,450
36,375 - 36,624	25,200	25,540	25,870	26,200	26,540	26,870	27,170	27,460	27,750	28,050	28,340	28,610
36,625 - 36,874	25,340	25,680	26,010	26,350	26,680	27,010	27,320	27,620	27,910	28,200	28,490	28,770
36,875 - 37,124	25,480	25,820	26,160	26,490	26,820	27,150	27,480	27,770	28,060	28,350	28,640	28,930
37,125 - 37,374	25,610	25,960	26,300	26,630	26,960	27,300	27,630	27,920	28,210	28,500	28,790	29,080
37,375 - 37,624	25,750	26,110	26,440	26,770	27,110	27,440	27,770	28,070	28,360	28,650	28,950	29,240
37,625 - 37,874	25,880	26,240	26,580	26,920	27,250	27,580	27,910	28,220	28,520	28,810	29,100	29,390
37,875 - 38,124	26,010	26,380	26,720	27,060	27,390	27,720	28,060	28,380	28,670	28,960	29,250	29,540
38,125 - 38,374	26,150	26,510	26,870	27,200	27,530	27,870	28,200	28,530	28,820	29,110	29,400	29,690
38,375 - 38,624	26,280	26,650	27,010	27,340	27,670	28,010	28,340	28,670	28,970	29,260	29,560	29,850
38,625 - 38,874	26,420	26,780	27,150	27,480	27,820	28,150	28,480	28,820	29,130	29,420	29,710	30,000
38,875 - 39,124	26,550	26,920	27,280	27,630	27,960	28,290	28,630	28,960	29,280	29,570	29,860	30,150
39,125 - 39,374	26,690	27,050	27,420	27,770	28,100	28,430	28,770	29,100	29,430	29,720	30,010	30,300
39,375 - 39,624	26,820	27,190	27,550	27,910	28,240	28,580	28,910	29,240	29,580	29,870	30,160	30,460
39,625 - 39,874	26,970	27,330	27,700	28,060	28,400	28,730	29,060	29,400	29,730	30,040	30,330	30,620

Table D: Expected Family Contribution for a Single Independent Student--1986-87

Adjusted Gross Income	Number of Family Members											
	1	2	3	4	5	6	7	8	9	10	11	12
39,875 - 40,124	27,120	27,490	27,850	28,210	28,560	28,890	29,220	29,560	29,890	30,210	30,500	30,790
40,125 - 40,374	27,270	27,640	28,000	28,370	28,720	29,050	29,380	29,720	30,050	30,380	30,670	30,960
40,375 - 40,624	27,430	27,790	28,150	28,520	28,880	29,210	29,540	29,880	30,210	30,540	30,840	31,130
40,625 - 40,874	27,580	27,940	28,310	28,670	29,040	29,370	29,700	30,040	30,370	30,700	31,010	31,300
40,875 - 41,124	27,730	28,100	28,460	28,820	29,190	29,530	29,860	30,200	30,530	30,860	31,180	31,470
41,125 - 41,374	27,880	28,250	28,610	28,980	29,340	29,690	30,020	30,360	30,690	31,020	31,350	31,640
41,375 - 41,624	28,040	28,400	28,760	29,130	29,490	29,850	30,180	30,520	30,850	31,180	31,510	31,810
41,625 - 41,874	28,190	28,550	28,920	29,280	29,650	30,010	30,340	30,680	31,010	31,340	31,670	31,980
41,875 - 42,124	28,340	28,710	29,070	29,430	29,800	30,160	30,500	30,840	31,170	31,500	31,830	32,150
42,125 - 42,374	28,490	28,860	29,220	29,590	29,950	30,310	30,660	31,000	31,330	31,660	31,990	32,320
42,375 - 42,624	28,650	29,010	29,370	29,740	30,100	30,470	30,820	31,160	31,490	31,820	32,150	32,490
42,625 - 42,874	28,800	29,160	29,530	29,890	30,260	30,620	30,980	31,320	31,650	31,980	32,310	32,650
42,875 - 43,124	28,950	29,320	29,680	30,040	30,410	30,770	31,140	31,480	31,810	32,140	32,470	32,810
43,125 - 43,374	29,100	29,470	29,830	30,200	30,560	30,920	31,290	31,640	31,970	32,300	32,630	32,970
43,375 - 43,624	29,260	29,620	29,980	30,350	30,710	31,080	31,440	31,800	32,130	32,460	32,790	33,130
43,625 - 43,874	29,410	29,770	30,140	30,500	30,870	31,230	31,590	31,960	32,290	32,620	32,950	33,290
43,875 - 44,124	29,560	29,930	30,290	30,650	31,020	31,380	31,750	32,110	32,450	32,780	33,110	33,450
44,125 - 44,374	29,710	30,080	30,440	30,810	31,170	31,530	31,900	32,260	32,610	32,940	33,270	33,610
44,375 - 44,624	29,870	30,230	30,590	30,960	31,320	31,690	32,050	32,410	32,770	33,100	33,430	33,770
44,625 - 44,874	30,020	30,380	30,750	31,110	31,480	31,840	32,200	32,570	32,930	33,260	33,590	33,930
44,875 - 45,124	30,170	30,540	30,900	31,260	31,630	31,990	32,360	32,720	33,080	33,420	33,750	34,090
45,125 - 45,374	30,320	30,690	31,050	31,420	31,780	32,140	32,510	32,870	33,240	33,580	33,910	34,250
45,375 - 45,624	30,480	30,840	31,200	31,570	31,930	32,300	32,660	33,020	33,390	33,740	34,070	34,410
45,625 - 45,874	30,630	30,990	31,360	31,720	32,090	32,450	32,810	33,180	33,540	33,900	34,230	34,570
45,875 - 46,124	30,780	31,150	31,510	31,870	32,240	32,600	32,970	33,330	33,690	34,060	34,390	34,730
46,125 - 46,374	30,930	31,300	31,660	32,030	32,390	32,750	33,120	33,480	33,850	34,210	34,550	34,890
46,375 - 46,624	31,090	31,450	31,810	32,180	32,540	32,910	33,270	33,630	34,000	34,360	34,710	35,050
46,625 - 46,874	31,240	31,600	31,970	32,330	32,700	33,060	33,420	33,790	34,150	34,520	34,870	35,210
46,875 - 47,124	31,390	31,760	32,120	32,480	32,850	33,210	33,580	33,940	34,300	34,670	35,030	35,370
47,125 - 47,374	31,540	31,910	32,270	32,640	33,000	33,360	33,730	34,090	34,460	34,820	35,180	35,530
47,375 - 47,624	31,700	32,060	32,420	32,790	33,150	33,520	33,880	34,240	34,610	34,970	35,340	35,690
47,625 - 47,874	31,840	32,210	32,580	32,940	33,310	33,670	34,030	34,400	34,760	35,130	35,490	35,850
47,875 - 48,124	31,970	32,370	32,730	33,090	33,460	33,820	34,190	34,550	34,910	35,280	35,640	36,010
48,125 - 48,374	32,110	32,520	32,880	33,250	33,610	33,970	34,340	34,700	35,070	35,430	35,790	36,160
48,375 - 48,624	32,240	32,670	33,030	33,400	33,760	34,130	34,490	34,850	35,220	35,580	35,950	36,310
48,625 - 48,874	32,380	32,810	33,190	33,550	33,920	34,280	34,640	35,010	35,370	35,740	36,100	36,460
48,875 - 49,124	32,510	32,950	33,340	33,700	34,070	34,430	34,800	35,160	35,520	35,890	36,250	36,620
49,125 - 49,374	32,650	33,080	33,490	33,860	34,220	34,580	34,950	35,310	35,680	36,040	36,400	36,770
49,375 - 49,624	32,780	33,220	33,640	34,010	34,370	34,740	35,100	35,460	35,830	36,190	36,560	36,920
49,625 - 49,874	32,920	33,350	33,790	34,160	34,530	34,890	35,250	35,620	35,980	36,350	36,710	37,070

Table D: Expected Family Contribution for a Single Independent Student—1986-87

Adjusted Gross Income	Number of Family Members 1	2	3	4	5	6	7	8	9	10	11	12
49,875 - 50,124	33,050	33,490	33,920	34,310	34,680	35,040	35,410	35,770	36,130	36,500	36,860	37,230
50,125 - 50,374	33,190	33,620	34,060	34,470	34,830	35,190	35,560	35,920	36,290	36,650	37,010	37,380
50,375 - 50,624	33,320	33,760	34,190	34,620	34,980	35,350	35,710	36,070	36,440	36,800	37,170	37,530
50,625 - 50,874	33,460	33,890	34,330	34,770	35,140	35,500	35,860	36,230	36,590	36,960	37,320	37,680
50,875 - 51,124	33,590	34,030	34,460	34,900	35,290	35,650	36,020	36,380	36,740	37,110	37,470	37,840
51,125 - 51,374	33,730	34,160	34,600	35,040	35,440	35,800	36,170	36,530	36,900	37,260	37,620	37,990
51,375 - 51,624	33,860	34,300	34,730	35,170	35,590	35,960	36,320	36,680	37,050	37,410	37,780	38,140
51,625 - 51,874	34,000	34,430	34,870	35,310	35,740	36,110	36,470	36,840	37,200	37,570	37,930	38,290
51,875 - 52,124	34,130	34,570	35,000	35,440	35,880	36,260	36,630	36,990	37,350	37,720	38,080	38,450
52,125 - 52,374	34,270	34,700	35,140	35,580	36,010	36,410	36,780	37,140	37,510	37,870	38,230	38,600
52,375 - 52,624	34,400	34,840	35,270	35,710	36,150	36,570	36,930	37,290	37,660	38,020	38,390	38,750
52,625 - 52,874	34,540	34,970	35,410	35,850	36,280	36,720	37,080	37,450	37,810	38,180	38,540	38,900
52,875 - 53,124	34,670	35,110	35,540	35,980	36,420	36,860	37,240	37,600	37,960	38,330	38,690	39,060
53,125 - 53,374	34,610	35,240	35,680	36,120	36,550	36,990	37,390	37,750	38,120	38,480	38,840	39,210
53,375 - 53,624	34,940	35,380	35,810	36,250	36,690	37,130	37,540	37,900	38,270	38,630	39,000	39,360
53,625 - 53,874	35,080	35,510	35,950	36,390	36,820	37,260	37,690	38,060	38,420	38,790	39,150	39,510
53,875 - 54,124	35,210	35,650	36,080	36,520	36,960	37,400	37,830	38,210	38,570	38,940	39,300	39,670
54,125 - 54,374	35,350	35,780	36,220	36,660	37,090	37,530	37,970	38,360	38,730	39,090	39,450	39,820
54,375 - 54,624	35,480	35,920	36,350	36,790	37,230	37,670	38,100	38,510	38,880	39,240	39,610	39,970
54,625 - 54,874	35,620	36,050	36,490	36,930	37,360	37,800	38,240	38,670	39,030	39,400	39,760	40,120
54,875 - 55,124	35,750	36,190	36,620	37,060	37,500	37,940	38,370	38,810	39,180	39,550	39,910	40,280
55,125 - 55,374	35,890	36,320	36,760	37,200	37,630	38,070	38,910	38,940	39,340	39,700	40,060	40,430
55,375 - 55,624	36,020	36,460	36,890	37,330	37,770	38,210	38,640	39,080	39,490	39,850	40,220	40,580
55,625 - 55,874	36,160	36,590	37,030	37,470	37,900	38,340	38,780	39,210	39,640	40,010	40,370	40,730
55,875 - 56,124	36,290	36,730	37,160	37,600	38,040	38,480	38,910	39,350	39,790	40,160	40,520	40,890
56,125 - 56,374	36,430	36,860	37,300	37,740	38,170	38,610	39,050	39,480	39,920	40,310	40,670	41,040
56,375 - 56,624	36,560	37,000	37,430	37,870	38,310	38,750	39,180	39,620	40,060	40,460	40,830	41,190
56,625 - 56,874	36,700	37,130	37,570	38,010	38,440	38,880	39,320	39,750	40,190	40,620	40,980	41,340
56,875 - 57,124	36,830	37,270	37,700	38,140	38,580	39,020	39,450	39,890	40,330	40,760	41,130	41,500
57,125 - 57,374	36,970	37,400	37,840	38,280	38,710	39,150	39,990	40,020	40,460	40,900	41,280	41,650
57,375 - 57,624	37,100	37,540	37,970	38,410	38,850	39,290	39,720	40,160	40,600	41,030	41,440	41,800
57,625 - 57,874	37,240	37,670	38,110	38,550	38,980	39,420	39,860	40,290	40,730	41,170	41,590	41,950
57,875 - 58,124	37,370	37,810	38,240	38,680	39,120	39,560	39,990	40,430	40,870	41,300	41,740	42,110
58,125 - 58,374	37,510	37,940	38,380	38,820	39,250	39,690	40,130	40,560	41,000	41,440	41,870	42,260
58,375 - 58,624	37,640	38,080	38,510	38,950	39,390	39,830	40,260	40,700	41,140	41,570	42,010	42,410
58,625 - 58,874	37,780	38,210	38,650	39,090	39,520	39,960	40,400	40,830	41,270	41,710	42,140	42,560
58,875 - 59,124	37,910	38,350	38,780	39,220	39,660	40,100	40,530	40,970	41,410	41,840	42,280	42,720
59,125 - 59,374	38,050	38,480	38,920	39,360	39,790	40,230	40,670	41,100	41,540	41,980	42,410	42,850
59,375 - 59,624	38,180	38,620	39,050	39,490	39,930	40,370	40,800	41,240	41,680	42,110	42,550	42,990
59,625 - 59,874	38,320	38,750	39,190	39,630	40,060	40,500	40,940	41,370	41,810	42,250	42,680	43,120

Table D: Expected Family Contribution for a Single Independent Student—1986-87

Adjusted Gross Income	Number of Family Members											
	1	2	3	4	5	6	7	8	9	10	11	12
59,875 - 60,124	38,450	38,890	39,320	39,760	40,200	40,640	41,070	41,510	41,950	42,380	42,820	43,260
60,125 - 60,374	38,590	39,020	39,460	39,900	40,330	40,770	41,210	41,640	42,080	42,520	42,950	43,390
60,375 - 60,624	38,720	39,160	39,590	40,030	40,470	40,910	41,340	41,780	42,220	42,650	43,090	43,530
60,625 - 60,874	38,860	39,290	39,730	40,170	40,600	41,040	41,480	41,910	42,350	42,790	43,220	43,660
60,875 - 61,124	38,990	39,430	39,860	40,300	40,740	41,180	41,610	42,050	42,490	42,920	43,360	43,800
61,125 - 61,374	39,130	39,560	40,000	40,440	40,870	41,310	41,750	42,180	42,620	43,060	43,490	43,930
61,375 - 61,624	39,260	39,700	40,130	40,570	41,010	41,450	41,880	42,320	42,760	43,190	43,630	44,070
61,625 - 61,874	39,400	39,830	40,270	40,710	41,140	41,580	42,020	42,450	42,890	43,330	43,760	44,200
61,875 - 62,124	39,530	39,970	40,400	40,840	41,280	41,720	42,150	42,590	43,030	43,460	43,900	44,340
62,125 - 62,374	39,670	40,100	40,540	40,980	41,410	41,850	42,290	42,720	43,160	43,600	44,030	44,470
62,375 - 62,624	39,800	40,240	40,670	41,110	41,550	41,990	42,420	42,860	43,300	43,730	44,170	44,610
62,625 - 62,874	39,940	40,370	40,810	41,250	41,680	42,120	42,560	42,990	43,430	43,870	44,300	44,740
62,875 - 63,124	40,070	40,510	40,940	41,380	41,820	42,260	42,690	43,130	43,570	44,000	44,440	44,880
63,125 - 63,374	40,210	40,640	41,080	41,520	41,950	42,390	42,830	43,260	43,700	44,140	44,570	45,010
63,375 - 63,624	40,340	40,780	41,210	41,650	42,090	42,530	42,960	43,400	43,840	44,270	44,710	45,150
63,625 - 63,874	40,480	40,910	41,350	41,790	42,220	42,660	43,100	43,530	43,970	44,410	44,840	45,280
63,875 - 64,124	40,610	41,050	41,480	41,920	42,360	42,800	43,230	43,670	44,110	44,540	44,980	45,420
64,125 - 64,374	40,740	41,180	41,620	42,060	42,490	42,930	43,370	43,800	44,240	44,680	45,110	45,550
64,375 - 64,624	40,870	41,320	41,750	42,190	42,630	43,070	43,500	43,940	44,380	44,810	45,250	45,690
64,625 - 64,874	41,000	41,450	41,890	42,330	42,760	43,200	43,640	44,070	44,510	44,950	45,380	45,820
64,875 - 65,124	41,120	41,590	42,020	42,460	42,900	43,340	43,770	44,210	44,650	45,080	45,520	45,960
65,125 - 65,374	41,250	41,720	42,160	42,600	43,030	43,470	43,910	44,340	44,780	45,220	45,650	46,090
65,375 - 65,624	41,380	41,850	42,290	42,730	43,170	43,610	44,040	44,480	44,920	45,350	45,790	46,230
65,625 - 65,874	41,510	41,970	42,430	42,870	43,300	43,740	44,180	44,610	45,050	45,490	45,920	46,360
65,875 - 66,124	41,630	42,100	42,560	43,000	43,440	43,880	44,310	44,750	45,190	45,620	46,060	46,500
66,125 - 66,374	41,760	42,230	42,700	43,140	43,570	44,010	44,450	44,880	45,320	45,760	46,190	46,630
66,375 - 66,624	41,890	42,360	42,830	43,270	43,710	44,150	44,580	45,020	45,460	45,890	46,330	46,770
66,625 - 66,874	42,020	42,480	42,950	43,410	43,840	44,280	44,720	45,150	45,590	46,030	46,460	46,900
66,875 - 67,124	42,140	42,610	43,080	43,540	43,980	44,420	44,850	45,290	45,730	46,160	46,600	47,040
67,125 - 67,374	42,270	42,740	43,210	43,680	44,110	44,550	44,990	45,420	45,860	46,300	46,730	47,170
67,375 - 67,624	42,400	42,870	43,340	43,800	44,250	44,690	45,120	45,560	46,000	46,430	46,870	47,310
67,625 - 67,874	42,530	42,990	43,460	43,930	44,380	44,820	45,260	45,690	46,130	46,570	47,000	47,440
67,875 - 68,124	42,650	43,120	43,590	44,060	44,520	44,960	45,390	45,830	46,270	46,700	47,140	47,580
68,125 - 68,374	42,780	43,250	43,720	44,190	44,650	45,090	45,530	45,960	46,400	46,840	47,270	47,710
68,375 - 68,624	42,910	43,380	43,850	44,310	44,780	45,230	45,660	46,100	46,540	46,970	47,410	47,850
68,625 - 68,874	43,040	43,500	43,970	44,440	44,910	45,360	45,800	46,230	46,670	47,110	47,340	47,980
68,875 - 69,124	43,160	43,630	44,100	44,570	45,040	45,500	45,930	46,370	46,810	47,240	47,680	48,120
69,125 - 69,374	43,290	43,760	44,230	44,700	45,160	45,630	46,070	46,500	46,940	47,380	47,810	48,250
69,375 - 69,624	43,420	43,890	44,360	44,820	45,290	45,760	46,200	46,640	47,080	47,510	47,950	48,390
69,625 - 69,874	43,550	44,010	44,480	44,950	45,420	45,890	46,340	46,770	47,210	47,650	48,080	48,520

Table D: Expected Family Contribution for a Single Independent Student—1986-87

Adjusted Gross Income	Number of Family Members											
	1	2	3	4	5	6	7	8	9	10	11	12
69,875 - 70,124	43,670	44,140	44,610	45,080	45,550	46,010	46,470	46,910	47,350	47,780	48,220	48,660
70,125 - 70,374	43,800	44,270	44,740	45,210	45,670	46,140	46,610	47,040	47,480	47,920	48,350	48,790
70,375 - 70,624	43,930	44,400	44,870	45,330	45,800	46,270	46,740	47,180	47,620	48,050	48,490	48,930
70,625 - 70,874	44,060	44,520	44,990	45,460	45,930	46,400	46,860	47,310	47,750	48,190	48,620	49,060
70,875 - 71,124	44,180	44,650	45,120	45,590	46,060	46,520	46,990	47,450	47,890	48,320	48,760	49,200
71,125 - 71,374	44,310	44,780	45,250	45,720	46,180	46,650	47,120	47,580	48,020	48,460	48,890	49,330
71,375 - 71,624	44,440	44,910	45,380	45,840	46,310	46,780	47,250	47,720	48,160	48,590	49,030	49,470
71,625 - 71,874	44,570	45,030	45,500	45,970	46,440	46,910	47,370	47,840	48,290	48,730	49,160	49,600
71,875 - 72,124	44,690	45,160	45,630	46,100	46,570	47,030	47,500	47,970	48,430	48,860	49,300	49,740
72,125 - 72,374	44,820	45,290	45,760	46,230	46,690	47,160	47,630	48,100	48,560	49,000	49,430	49,870
72,375 - 72,624	44,950	45,420	45,890	46,350	46,820	47,290	47,760	48,230	48,690	49,130	49,570	50,010
72,625 - 72,874	45,080	45,540	46,010	46,480	46,950	47,420	47,880	48,350	48,820	49,270	49,700	50,140
72,875 - 73,124	45,200	45,670	46,140	46,610	47,080	47,540	48,010	48,480	48,950	49,400	49,840	50,280
73,125 - 73,374	45,330	45,800	46,270	46,740	47,200	47,670	48,140	48,610	49,080	49,540	49,970	50,410
73,375 - 73,624	45,460	45,930	46,400	46,860	47,330	47,800	48,270	48,740	49,200	49,670	50,110	50,550
73,625 - 73,874	45,590	46,050	46,520	46,990	47,460	47,930	48,390	48,860	49,330	49,800	50,240	50,680
73,875 - 74,124	45,710	46,180	46,650	47,120	47,590	48,050	48,520	48,990	49,460	49,930	50,380	50,820
74,125 - 74,374	45,840	46,310	46,780	47,250	47,710	48,180	48,650	49,120	49,590	50,050	50,510	50,950
74,375 - 74,624	45,970	46,440	46,910	47,370	47,840	48,310	48,780	49,250	49,710	50,180	50,650	51,090
74,625 - 74,874	46,100	46,560	47,030	47,500	47,970	48,440	48,900	49,370	49,840	50,310	50,780	51,220
74,875 - 75,000	46,220	46,690	47,160	47,630	48,100	48,560	49,030	49,500	49,970	50,440	50,900	51,360
Over 75,000	*** MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM ***											

[51 FR 12766, Apr. 15, 1986]

APPENDIX C TO PART 682—PROCEDURES FOR CURING VIOLATIONS OF THE DUE DILIGENCE IN COLLECTION AND TIMELY FILING OF CLAIMS REQUIREMENTS APPLICABLE TO FISLP AND FEDERAL PLUS PROGRAM LOANS AND FOR REPAYMENT OF INTEREST AND SPECIAL ALLOWANCE OVERBILLINGS [BULLETIN L-77A]

NOTE: The following is a reprint of Bulletin L-77a, issued on January 7, 1983, with minor modifications made to reflect changes in the program regulations since the date. All references to "the date of this bulletin" herein refer to that date. All references made to the Federal Insured Student Loan Program (FISLP) shall be understood to include the Federal PLUS Program. The bulletin includes references to the 120- and 180-day default periods that used to apply to GSLP and PLUS Program loans. Public Law 99-272 established new default periods of 180 and 240 days (as set out in 34 CFR 682.200 of these regulations) for all new loans and many existing ones. Although the discussion in this Appendix C refers to the 120- and 180-day default periods, it is equally applicable to the new 180- and 240-day default periods. Finally, references to sections of the regulations published on September 17, 1979 (44 FR 53916) are so noted. All other citations refer to the current regulations.

Introduction

This bulletin prescribes procedures for lenders to use (1) to cure violations of the requirements for due diligence in collection ("the diligence") and timely filing of claims under the Federal Insured Student Loan Program (FISLP), and (2) to repay interest and special allowance overbillings made on loans evidencing such violations. *See* 34 CFR 682.507, 682.511.[1] These procedures allow for the reinstatement of a lender's eligibility for interest and special allowance and claim payments on loans evidencing such violations, under specified circumstances. These procedures apply to loans for which the first day of the 120-day or 180-day default period occurred on or after October 21, 1979 (the effective date of the September 17, 1979, regulations), *whether or not* the loans have previously been submitted as claims to the Secretary.

The due diligence and timely filing requirements governing the FISLP were established in response to requests from some lenders for more detailed regulatory guidance on the proper handling of FISLP loans. Despite the promulgation of these provisions, a number of lenders have failed to exercise the requisite care in their treatment of these loans, thereby increasing the risk of default thereon and, in many cases, prejudicing the Secretary's ability to collect from the borrowers. At the time the current due diligence and timely filing rules were issued, the Secretary anticipated that violations of these rules would be so infrequent as to permit requests for cures to be handled individually, *See* 44 FR 53916 (September 17, 1979). However, the unexpectedly high incidence of violations of these rules has made continued case-by-case treatment of all cure requests administratively unmanageable. After carefully considering the views of lenders and other program participants, the Secretary has decided to exercise his authority under 20 U.S.C. 1082(a) (5), (6), and 34 CFR 682.517(g) (1979), and institute uniform procedures by which lenders with loans involving violations of the due diligence or timely filing requirements may cure these violations.

Due Diligence

Except as provided in 34 CFR 682.509(e)(3) (1979), collection activity is required to begin immediately upon delinquency by the borrower in honoring the repayment obligation. This holds true whether or not the borrower received a repayment schedule or signed a repayment agreement. Under 34 CFR 682.200, default on a FISLP loan occurs when a borrower fails to make a payment when due, provided this failure persists for 120 days for loans payable in monthly installments, or for 180 days for loans payable in less frequent installments. If, however, the lender has added the optional provision to the promissory note requiring the borrower to execute a repayment agreement not later than 120 days prior to the expiration of the grace period (*See* 34 CFR 682.509(e)(3), (1979), the loan entered repayment prior to September 4, 1985 (*see* 50 FR 35970), the lender sends the agreement to the borrower 150 days or more before the end of the grace period, and the agreement is not executed before the end of the grace period, default occurs at that time. *See* 34 CFR 682.510(b)(ii) (1979). One exception to this rule is as follows: if the holder of the loan is not the lender that made the loan, the holder may choose to forego enforcement of the optional 120-day provision in the note.

The 120/180 day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March

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[1] All references to the program regulations are to Part 682 of Title 34 of the Code of Federal Regulations (34 CFR Part 682).

1st payment three months late (June 1st), and makes no further payments, the default period begins on February 1st, with the first delinquency, and ends on August 1st, when the April 1st payment becomes 120 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time. *Note:* Lenders are strongly encouraged to exercise forbearance, *prior* to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. *See* 34 CFR 682.211. The forebearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

Timely Filing

The 90-day filing period applicable to FISLP default claims is set forth in 34 CFR 682.511(e) (1) and (3). The 90-day filing period begins at the end of the 120/180 day default period. The lender must file a default claim on a loan in default by the end of the filing period, unless the borrower brings the account current before the end of the filing period. In such a case, the lender may choose not to file a claim on the loan at that time.

In addition, for any loan less than 210 days delinquent on the date of this bulletin, the lender need not file a claim on that loan before the 210th day of delinquency (120-day default period plus 90-day filing period) if the borrower brings the account less than 120 days delinquent before such 210th day. Thus, in the above example, if the borrower makes the April 1st payment on August 2nd, the 90-day filing period continues to run from August 1st, unless the loan was less than 210 days delinquent on the date of this bulletin. If the loan was less than 210 days delinquent on the date of this bulletin, then the August 2nd payment makes the loan 91 days delinquent, and the lender may, but need not file a default claim on the loan at that time. If, however, that loan again becomes 120 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 120 days delinquent prior to the end of that 90 day period). If other words, for any loan less than 210 days delinquent on the date of this bulletin, the Secretary will permit a lender to treat payments made during the filing period as "curing" the default it such payments are sufficient to make the loan less than 120 days delinquent.

If a lender fails to comply with either the due diligence or timely filing requirements, the affected loan ceases to be insured; that is, the lender loses its right to receive interest benefits, special allowance and claim payments thereon. Some examples of violations of the due diligence requirements are set out in section I.C. below.

I. Cure Procuredures

A. Definitions

The following definitions apply to terms used throughout Section I of this bulletin.

"Full payment" means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, "exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $30 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $15 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $30, or two $15 payments in accordance with original repayment schedule or agreement.)

"Reinstatement" with respect to insurance coverage means the reinstatement of the lender's right to receive default, death, disability, or bankruptcy claim payments for the unpaid principal balance of the loan and for unpaid interest accruing on the loan after the date of reinstatement. Upon reinstatement of insurance, the borrower regains the right to receive forbearance or deferments, as appropriate. For purposes of this bulletin, "reinstatement" with respect to insurance on a loan does not include reinstatement of the lender's right to receive interest and special allowance payments on that loan. Reinstatement of the lender's rights to receive interest and special allowance payments is addressed in Section I.B. 1, below.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations. For any loan on which a cure is attempted under this bulletin, the lender may resume billing for interest and special allowance on the loan only for periods following the earlier of (1) its receipt of the equivalent of three full payments thereon, after the date of this bulletin or the date of the violation, whichever is later or (2) receipt by the borrower of an authorized deferment, after reinstatement of insurance coverage.

2. Reservation of the Secretary's Right to Strict Enforcement. While this bulletin allows cures to be attempted for particular violations in specified ways, the Secretary retains the option of refusing to permit or recognize cures in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of the due diligence or timely filing rules, and in cases where the best interests of the program otherwise require strict enforcement of these requirements. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. *Interest and Special Allowance Repayment and Certification Required as a Condition for the Secretary Recognition of a Cure.* The Secretary has commenced a concerted effort to recoup all excess interest and special allowance payments made on loans involving due diligence or timely filing violations. Accordingly, the Secretary will not recognize cures for such violations until the lender has filed an executive Interest and Special Allowance Certification Form (Attachment A) with the Division of Certification and Program Review of the regional office responsible for the State in which the lender maintains its principal place of business. Additionally, the lender must enclose a photocopy of the certification with each "cured" claim it files.

4. *Applicability of the Cure Procedures to Particular Classes of Loans.* The cure procedures outlined in this bulletin apply only to a loan for which the first day of the 120/180 day default period that ended with default by the borrower occurred on or after October 21, 1979, and which involve violations *only* of the due diligence and/or timely filing requirements.

The cure procedures applicable to loans involving due diligence violations also apply to loans involving violations of both the timely filing and due diligence requirements.

5. *Excusal of Certain Due Diligence Violations.* A lender whose claim was previously denied *solely* for violation of the timely filing rule, and who is permitted to cure that violation under the procedures set out in this bulletin, will not be required to utilize the procedures for curing due diligence violations, or to repay interest and special allowance improperly received from the Secretary as a result of a due diligence violation for periods prior to the timely filing violation. This applies even if, upon submission of the "cured" claim, the Secretary discovers that evidence of due diligence violations appeared in the file of the previously rejected claim.

The Secretary will also excuse a due diligence violation by a lender if the account was brought current by the borrower (or another, other than the lender, on the borrower's behalf) prior to the 120th/180th day of the delinquency period during which the violation occurred.

6. *Treatment of Accrued Interest on "Cured" Claims—a. Due Diligence Violations.* For any default claim involving "cured" violations of the due diligence rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the first day of the 120/180 day period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any loan involving "cured" due diligence violations, the lender may capitalize unpaid interest accruing on the loan from the commencement of the 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim on that loan, the lender must deduct this capitalized interest from the amount of the claim. This deduction must be reflected in column 15 on the OE Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

b. *Timely Filing Violations.* For any default claim involving "cured" violations of the timely filing rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the end of the 120/180 day default period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any default claim involving a "cured" timely filing violation, if insurance coverage is later reinstated, the lender may capitalize unpaid interest accruing on the loan from the commencement of the original 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim, on that loan, the lender must deduct this capitalized interest from the amount of the claim, except that the lender need not deduct from the claim unpaid interest that accrued on the loan during the original 120/180 day default period. This deduction must be reflected in Column 15 of the OE Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan filed with the claim evidencing the cure.

Some timely filing cures will not reinstate insurance coverage. For treatment of accrued interest in such cases, see Section I.D.1.c.

7. *Documents to be Submitted with "Cured" Claims.* The Secretary requests that any lender submitting a claim on a loan involving "cured" violations identify the claim as such with a note in the claim file stapled to the new OE Form 1207.

For all "cured" claims, the lender must submit:

- For loans on which a claim was previously rejected, all documents sent by the regional office with the original claim (when the claim was rejected and returned to the lender), including without limitation, the original OE Form 1207 and all documents showing the reason(s) for the original rejection;
- All documents ordinarily required in connection with the submission of a default claim, including, without limitation, the promissory note, which must bear a valid assignment to the United States of America;
- A new OE Form 1207;
- All documents showing that the lender has complied with the applicable cure procedures and requirements; and
- A copy of the Interest and Special Allowance Certification form (Attachment A).

C. Cures for Violations of the Due Diligence in Collection Requirements (34 CFR 682.507)

A violation of the due diligence in collection rules occurs when a lender fails to meet requirements found in 34 CFR 682.507. For example, a violation occurs if the lender fails to:

- Remind the borrower of the date a missed payment was due within 15 days of delinquency;
- Attempt to contact the borrower and any endorser at least 3 times at regular intervals during the rest of the 120/180 day default period;
- Request pre-claims assistance from the Department of Education;
- Request skip-tracing assistance from the Secretary, if required, or
- Send a final demand letter to the borrower exercising the option to accelerate the due date for the outstanding balance of the loan, unless the lender does not know the borrower's address as of the 90th day of delinquency.

1. *Reinstatement of Insurance Coverage.* In the case of a due diligence violation, the lender may utilize either of the two procedures described below for obtaining reinstatement of insurance coverage on the loan. After the date of this bulletin, or after the date of the violation, whichever is later:

(a) the lender obtains a new repayment agreement signed by the borrower which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(6); or

(b) the lender obtains 3 full payments. If the borrower later defaults, the lender must submit evidence of these payments (*e.g.* copies of the checks) with the claim.

2. *Borrower Deemed Current As of Date of Cure.* On the date the lender receives a signed copy of the new repayment agreement, or receives the third (curing) payment, insurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection procedures set out in 34 CFR 682.507, and the timely filing requirements set out in 34 CFR 682.511.

D. Cures for Violations of the Timely Filing Requirements (34 CFR 682.511)

1. *Default Claims*—a. *Reinstatement of Insurance Coverage.* In order to obtain reinstatement of insurance coverage on a loan in the case of a timely filing violation, the lender must first locate the borrower after the date of this bulletin, or after the date of the violation, whichever is later (see Section I.D.1.d. for description of acceptable evidence of location). Then, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(6), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 30 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 working days thereafter, send the borrower a copy of the attached "8-Hour" collection letter, on the lender's letterhead. (See Attachment B).

b. *Borrower Deemed Current Under Certain Circumstances.* If, within 45 days after the lender sends the new repayment agreement to the borrower for signature, the borrower makes a full payment or signs and returns the new repayment agreement, insurance coverage on the loan is reinstated. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection steps set out in 34 CFR 682.507 and the timely filing requirements set out in 34 CFR 682.511.

c. *Borrower Deemed in Default Under Certain Circumstances.* If the borrower does not make a full payment, or sign and return the new repayment agreement, within 45 days after the lender sends the new repayment agreement, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan accompanied by acceptable evidence of location (see I.D.1.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph, on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period.

d. *Acceptable Evidence of Location.* Only the following documentation is acceptable as evidence that the lender has located the borrower:

(i) Postal receipt signed by the borrower not more than 25 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; *or*

(ii) A completed "Certification of Borrower Location" form (Attachment C).

2. *Death, Disability, and Bankruptcy Claims.* Lenders may immediately resubmit any death or disability claim which was rejected solely for failure to meet the 60 day timely filing requirement (*see* 34 CFR 685.511(e)(2)). However, the Secretary will not pay any such claim if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the due diligence or timely filing requirements applicable to default claims with respect to that loan. Interest that accrued on the loan after the expiration of the 60-day filing period remains uninsured by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to *bankruptcy* claims causes irreparable harm to the Secretary's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to permit cures for violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy. In that case, the lender shall treat the loan as in default. The Secretary will honor a default claim later filed on such a loan only if the lender has met the cure requirements set out in Section I.C. above for due diligence violations.

II. REPAYMENT OF INTEREST AND SPECIAL ALLOWANCE ON LOANS EVIDENCING VIOLATIONS OF THE DUE DILIGENCE OR TIMELY FILING REQUIREMENTS

A. General Rule

It has always been the Secretary's interpretation of the FISLP statute and regulations that a lender's right to receive interest and special allowance payments on a FISLP loan terminates immediately following the lender's violation of the due diligence or timely filing requirements. This applies whether or not the lender has filed a claim on the loan. In other words, lenders may receive interest and special allowance only on loans which are insured by the Secretary. Since these violations result in the termination of insurance, they also result in the termination of FISLP benefits.

B. Cessation of Billing on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements

Any lender currently billing the Secretary for interest and special allowance on a loan that the lender *knows* involves a due diligence or timely filing violation must cease doing so immediately. However, except in connection with the certification described below, lenders are not required at this time to review their loan portfolios for due diligence and timely filing violations.

C. Determination of Amounts of Interest and Special Allowance That Must Be Repaid

1. *Due Diligence Violations.* In the case of due diligence violations, it is often difficult to ascertain the precise date on which a violation occurred. For the administrative ease of the Secretary and lenders, the Secretary has decided to waive his right to recoup interest and special allowance payments made to a lender for periods between the date of a due diligence violation and the end of the 120/180 day default period. However, any lender that has received interest and/or special allowance payments from the Secretary for periods after the end of the 120/180 day default period on a loan that the lender *knows* involves a due diligence violation must promptly repay those amounts.

2. *Timely Filing Violations.* In the case of timely filing violations, the lender loses its right to receive interest and special allowance payments as of the expiration of the applicable timely filing period. Therefore, any lender that has received interest and/or special allowance payments from the Secretary for periods following the end of the applicable timely filing period on a loan that the lender *knows* involves a timely filing violation must repay those amounts.

3. *Situations in Which a Lender May Have Received Interest Benefits for Periods During Which a Loan was Uninsured.* Because most due diligence violations, and all timely filing violations, occur after termination of the grace period, interest payments are ordinarily not affected by such violations. However, there are three types of situations in which a lender may have received interest payments from the Secretary to

which it was not entitled due to a due diligence or timely filing violation.

a. *Promissory notes that include a requirement that the borrower sign a repayment agreement no later than 120 days prior to the expiration of the grace period.* In such cases, a due diligence violation may occur during the grace period, when the lender may otherwise have been eligible to receive interest benefits. However the lender need not repay that interest to the Secretary. *See* II.C.1. above.

b. *Deferment Periods.* A due diligence violation may occur prior to a deferment period when the lender would otherwise have been eligible to receive interest benefits.

c. *Loans Made Prior to December 15, 1968.* A loan disbursed prior to December 15, 1968, and which qualified for payment of Federal interest benefits at the time the loan was disbursed, qualifies for payment of a 3 percent interest subsidy on the unpaid principal balance during the entire repayment period, provided the loan remains insured. In the case of such a loan, a due diligence or timely filing violation terminates the lender's eligibility for the 3 percent payments.

D. Procedures for Repayment of Federal Interest Benefits and Special Allowance Received by a Lender for Periods During Which a Loan Was Uninsured

A Lender must make the repayments of interest and/or special allowance discussed in II.C, above, by way of an adjustment during the two quarters immediately following the discovery of the violation. These adjustments must be reported in a format similar to that in Attachment D, and must not be reported on the normal Lender's Request for Interest and Special Allowance (ED Form 799) submission. Lenders are requested not to send a check with the adjustment, the overpaid amount will be deducted by the Secretary from the lender's next regular interest and special allowance payment. The adjustment must state the quarters for which the adjustment is being made, and the total dollar amounts of all loans involved in the adjustment. In addition, for five years after any loan for which an adjustment is made is repaid in full, the lender shall retain a record of the basis for the adjustment showing the amount(s) of the overbilling(s) repaid, the violation(s) giving rise to the overbilling(s), and the date it used for cessation of interest and/or special allowance eligibility in calculating the overbilled amount. *See* 34 CFR 682.515(a)(2). Completed adjustment forms should be sent to the following address: Student Loan Processing Center, P.O. Box 2640, Norfolk, Virginia 23501.

Attachments.

ATTACHMENT A—INTEREST AND SPECIAL ALLOWANCE CERTIFICATION FORM

I. (name) __________, as a duly authorized official of (lender name and address) __________, hereby certify on behalf of this institution as follows:

(1) After consulting with all appropriate employees, agents, and servicers of this institution responsible for the collection of, and the filing of claims on, FISLP loans. I have determined that this institution has not knowingly delayed filing claims on FISLP loans evidencing violations of the due diligence, timely filing or other requirements for the purpose of continuing to bill the Secretary of Education or his predecessors for interest benefits or special allowance thereon, nor will this institution do so in the future.

(2) This institution will thoroughly review all FISLP loans for which claims were denied for violation of the due diligence in collection or timely filing regulations, 34 CFR 682.511 and .516 (1979) respectively or the current regulations, 34 CFR 682.507 and .511, respectively. The purpose of this review will be to determine how much interest and special allowance the Secretary has paid this institution on these loans for the period(s) during which they were uninsured due to these violations. This institution will repay any and all such amounts so determined by way of an adjustment to one of the next two quarterly interest and special allowance billings (ED Form 799).

(3) This institution will retain all records and upon request will provide the Secretary of Education with all information required by Bulletin L-77a in connection with repayment of interest and special allowance overbillings.

Signature of Employee ______________

Date ______________

Lender identification Number __________

Attachment B

NOTICE

TO:

Date ____________________

Social Security Number ____________________

You have previously been notified that you are severely delinquent in repaying your Guaranteed Student Loan. This notice is our final effort to remedy this delinquency. You must contact us at ______________ within

48 HOURS

Failure to act upon this notice will result in transfer of your account to the Federal Government.

____

Official of Lender

____

Title

Attachment C **Certification of Borrower Location**

As an employee or agent of ______________________________
Name and Address of Lender

I hereby certify as follows:

1. On ______________, I spoke with or received written communication
Date
from (copy attached):
(circle a or b)
   (a) the borrower on the loan underlying this default claim; or
   (b) a parent, spouse, or sibling of the borrower.

2. The borrower, parent, spouse, or sibling represented to me that the borrower's address and telephone number are -- ______________________________
Address and Telephone Number

3. Within 15 days thereafter, this institution sent the borrower a new repayment agreement along with a collection letter of the type described in section I.D.1.a.ii of Bulletin L-77a, dated January 7, 1983, to the address set out in '2)' above.

4. (Applicable only if 1(b), above, is used) The letter and agreement referenced in 3, above, has not been returned undelivered.

ame of Borrower

orrower's SSN

Signature of Employee or Agent

Typed Name of Employee or Agent

Title of Employee or Agent

Date

Lender Identification Number

CURE PROCEDURE

Attachment B Repayment of Interest Benefits and Special Allowance

NAME OF LENDER, ID NUMBER, ADDRESS (STREET, CITY, STATE, ZIP CODE)

(1) BILLING PERIOD (CHECK ONE)
1 ☐ ANNUAL
2 ☐ SEMI-ANNUAL
3 ☐ QUARTERLY

(2) BILLING PERIOD ENDING (CHECK ONE)
1 ☐ MARCH 31
2 ☐ JUNE 30
3 ☐ SEPTEMBER 30
4 ☐ DECEMBER 31
YEAR 19 ____

(3) METHOD (CHECK ONE)
1 ☐ ACTUAL ACCRUAL
2 ☐ AVERAGE DAILY BALANCE
3 ☐ AVERAGE QUARTERLY BALANCE

EMPLOYER IDENTIFICATION NUMBER

LENDER'S ID (AND) ID NUMBER

INTEREST ADJUSTMENTS (Enter only those Adjustments occurring as a result of Lender Bulletin #77a)

☒ DECREASED $________

SPECIAL ALLOWANCE ADJUSTMENTS

Loans made before October 1, 1981:

QTR. ENDING MM/DD/YY	%	AVERAGE PRINCIPAL BALANCE		DIFFERENCE IN AVERAGE PRINCIPAL BALANCE
		BALANCE PREVIOUSLY REPORTED	SHOULD HAVE BEEN REPORTED	
	9%			
/ /	7%			
	9%			
/ /	7%			
	9%			
/ /	7%			
	9%			
/ /	7%			
	9%			
/ /	7%			
	9%			
/ /	7%			

Loans made on or after October 1, 1981:

/ /	14%			
	12%			
	9%			
	8%			
	7%			
/ /	14%			
	12%			
	9%			
	8%			
	7%			

NOTE: Do not submit this form concurrent with the submission of ED Form 799, "Lender's Request for Interest and Special Allowance. Lenders are required to maintain a copy of this form for their records.

[51 FR 40927, Nov. 10, 1986]

PART 690—PELL GRANT PROGRAM

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690.2 General definitions.
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Subpart B—Application Procedures for Determining Expected Family Contribution

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690.63 Calculation of a Pell Grant for a payment period.
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AUTHORITY: 20 U.S.C. 1070a through 1070a-6, unless otherwise noted.

Subpart A—Scope, Purpose and General Definitions

SOURCE: 50 FR 10717, Mar. 15, 1985, unless otherwise noted.

§ 690.1 Scope and purpose.

The Pell Grant Program awards grants to help financially needy students meet the cost of their postsecondary education.

(Authority: 20 U.S.C. 1070a)

§ 690.2 General definitions.

(a) Definitions of the following terms used in this part are described in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668:

Academic year
Award year
Clock hour
College Work-Study Program
Dependent student
Eligible program
Eligible student
Enrolled
Income Contingent Loan (ICL) Program
Independent student
Parent
Perkins Loan Program

One-year training program
Pell Grant Program
Proprietary institution of higher education
Postsecondary vocational institution
Public or private nonprofit institution of higher education
Recognized equivalent of a high school diploma
Regular student
Secretary
Six-month training program
State
Supplemental Educational Opportunity Grant Program.

(b) Other terms used in this part are:

Comparable State income tax return: A state income tax return based on the Federal income tax return which requires the filer to provide the amount of Federal income tax paid as well as the same information that he or she is required to provide on the Federal income tax return with regard to information being verified.

Disbursement Schedule: A table showing the grant amounts three-quarter and half-time students at term based institutions using credit hours would receive for an academic year. This table, published annually by the Secretary is based on—

(1) A student's Effective Family Contribution, as determined in accordance with sections 411B, 411C, and 411D of the HEA;

(2) A student's attendance costs as defined in section 411F(5) of the HEA; and

(3) The amount of funds available for making Pell Grants.

Enrollment status: Full-time, three-quarter-time, of half-time depending on a student's credit hour work load per academic term at an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours.

(2) Full-time or part-time depending on a student's credit hour work load per academic year, at an institution that does not use academic terms and measures progress by credit hours.

(3) Full-time or part-time depending on a student's clock hour work load per week at an institution that measures progress by clock hours.

Full-time student: An enrolled student who is carrying a full-time academic work load (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements.

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarters system;

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year;

(3) 24 clock hours per week for an institution using clock hours;

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks; or

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

Half-time student: (1) Except as provided in paragraph (2), an enrolled student who is carrying a half-time academic work load—as determined by the institution—which amounts to at least half the work load of the appropriate minimum requirement outlined in the definition of a full-time student.

(2) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours of work per week, or is earning at least 6 credit hours per semester, trimester or quarter. However, regardless of the work, no student enrolled solely in correspondence study is considered more than a half-time student.

Institution of higher education (Institution): A public or private nonprofit or proprietary institution of higher education or a postsecondary vocational institution.

Payment Schedule: A table showing a full-time student's scheduled Pell Grant for a given award year. This table, published annually by the Secretary, is based on—

(1) The student's Expected Family Contribution, as determined in accordance with sections 411B, 411C, and 411D of the HEA;

(2) The student's cost of attendance as defined in section 411F(5) of the HEA; and

(3) The amount of funds available to the Secretary for making Pell Grants.

Pell Grant Electronic Data Exchange: An electronic exchange system between the Secretary and an institution under which a student is able to correct or verify information contained on his or her SAR at the institution he or she is attending and the institution is able to print out a Student Aid Report for that student which is based on the corrected or verified information.

Scheduled Pell Grant: The amount of a Pell Grant which would be paid to a full-time student for a full academic year.

Student aid index: The term used on the Student Aid Report (SAR) to designate a student's expected family contribution for the Pell Grant Program.

Student Aid Report (SAR): A report provided to an applicant showing the amount of his or her expected family contribution.

Student Aid Report (SAR) Payment Document: A part of the SAR that is provided to the Secretary by an institution showing an applicant's expected family contribution, cost of attendance, and enrollment status, at that institution.

Three-quarter-time student: An enrolled student who is carrying a three-quarter-time academic work load—as determined by the institution—which amounts to at least three quarters of the work of the appropriate minimum requirement outlined in the definition of a "full-time student."

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

Valid Student Aid Report: A student Aid Report—

(a) On which all of the information used in the calculation of the applicant's expected family contribution is accurate and complete as of the date the application is signed; and

(b) For the Pell Grant Electronic Data Exchange, that is signed by the applicant, his or her spouse, and the applicant's parents if the applicant is a dependent student.

(Authority: 20 U.S.C. 1070a)

[50 FR 10717, Mar. 15, 1985, as amended at 51 FR 41926, Nov. 19, 1986; 51 FR 43161, Nov. 28, 1986; 52 FR 38207, Oct. 14, 1987; 52 FR 45735, Dec. 1, 1987]

§ 690.3 Definitions of payment period.

(a) *Payment period for an institution that has academic terms:*

(1) Except as noted in paragraph (a)(2) of this section, for an institution that uses semesters, trimesters, quarters or other academic terms, the pay-

ment period is the semester, trimester, quarter or other academic term.

(2) For an institution that uses semesters, trimesters, quarters or other academic terms and measures progress in clock hours—

(i) A payment period is a semester, trimester, quarter, or other academic term if the student completes all the clock hours scheduled for that term;

(ii) If at the end of a term, the student has not completed all of the clock hours scheduled for that term and the student has received a Pell Grant for that term, the payment period extends beyond that term for as long as it takes the student to complete the number of clock hours originally scheduled for that term; and

(iii) If a payment period extends into another term, the next payment period consists of the number of clock hours scheduled for that term that were not included in the previous payment period.

(b) *Payment period for an institution that does not have academic terms:* (1) For a student whose educational program is one academic year—

(i) The first payment period is the period of time in which the student completes the first half of his or her academic year (in credit or clock hours); and

(ii) The second payment period is the period of time in which the student completes the second half of that academic year.

(2) For a student whose educational program is more than one academic year, the first and second payment periods must be calculated under paragraph (b)(1) of this section. For subsequent academic years, or fractions of academic years, each payment period must be the period of time in which a student completes—

(i) One-half of the academic year; or

(ii) The remaining hours in the student's educational program, whichever is to be completed first.

(3) For a student whose educational program is less than an academic year—

(i) The first payment period must be the period of time which the student completes the first half of his or her educational program (in credit or clock hours); and

(ii) The second payment period must be the period of time in which the student completes the second half of his or her educational program.

(4) If an institution chooses to have more than two payment periods in an academic year or in a program of less than an academic year, the rules in paragraphs (b)(1) through (b)(3) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year, each payment period must correspond to one-third of the academic year.

(Authority: 20 U.S.C. 1070a)

[50 FR 10717, Mar. 15, 1985, as amended at 51 FR 43161, 43162, Nov. 28, 1986]

§§ 690.4—690.5 [Reserved]

§ 690.6 Duration of student eligibility.

(a) A student is eligible to receive a Pell Grant for the period of time required to complete his or here first undergraduate baccalaureate course of study.

(b) An institution shall determine when the student has completed the academic curriculum requirements for that first undergraduate baccalaureate course of study.

(c) Except as provided in paragraph (d) of this section, for a student who receives his or her first Pell Grant on or after July 1, 1987, the period of time required to complete his or here undergraduate baccalaureate course of study may not exceed the full-time equivalent of—

(1) Five academic years for an undergraduate degree or certificate program that normally requires four academic years or less of study to complete; or

(2) Six academic years for an undergraduate degree or certificate program that normally requires more than four academic years of study to complete.

(d)(1) The institution a student is attending may waive the limitations contained in paragraph (c) of this section if it determines that the student's failure to complete his or her undergraduate program in the time set forth in that paragraph resulted from an undue hardship caused by—

(i) The death of a relative of the student;

(ii) An injury or illness of the student; or

(iii) Other special circumstances.

(2) The institution must support with appropriate documentation any determination of undue hardship made under this paragraph.

(e) For the purpose of paragraph (c) of this section, any noncredit or remedial course taken by a student, including a course in English language instruction, is not included in determining that student's period of Pell Grant eligibility.

(Authority: 20 U.S.C. 1070a)

[52 FR 38207, Oct. 14, 1987]

§ 690.7 Institutional participation.

(a)(1) An institution of higher education is eligible to participate in the Pell Grant program if it—

(i) Meets the appropriate definition set forth in 34 CFR Part 668, Subpart A;

(ii) Enters into a program participation agreement with the Secretary; and

(iii) Complies with that agreement and with the applicable provisions of this part and 34 CFR Part 668.

(2) If an institution begins participation in the Pell Grant Program during an award year, a student enrolled and attending that institution is eligible to receive a Pell Grant for the payment period during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.

(b) If an institution becomes ineligible to participate in the Pell Grant Program during an award year, an eligible student who was attending the institution and who submitted a valid SAR to the institution before the date the institution became ineligible is paid a Pell Grant for that award year for—

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(c) An institution which becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary—

(1) The name and enrollment status of each eligible student who, during the award year, submitted a valid SAR to the institution before it became ineligible;

(2) The amount of funds paid to each Pell Grant recipient for that award year;

(3) The amount due each student eligible to receive a Pell Grant through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the Pell Grant expenditures for that award year to the date of termination.

(Authority: 20 U.S.C. 1070a)

[50 FR 10717, Mar. 15, 1985, as amended at 51 FR 43161, Nov. 28, 1986]

§ 690.8 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work which—

(1) Applies toward a student's degree or certificate or is remedial work taken by the student to help in his or her course of study;

(2) Is completed within the period of time required for regular course work; and

(3) does not exceed the amount of a student's regular course work for the payment period for which the student's enrollment status is being calculated.

(c) Notwithstanding the limitation in paragraph (b)(3) of this section a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(d) The following chart provides examples of the rules set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to six credits per term.

Under § 690.8	Number of credit hours regular work	Number of credit hours correspondence work	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.

(Authority: 20 U.S.C. 1070a)

[52 FR 45735, Dec. 1, 1987]

§ 690.9 Written agreements between two or more eligible Institutions.

(a) A student who is enrolled in an eligible program at one eligible institution and taking courses at one or more other eligible institutions which apply toward his or her degree or certificate at the first institution may receive Pell Grant assistance for attendance at both institutions only if there is a written agreement between the institutions.

(1) The institution at which the student is enrolled and expects to receive his or her degree or certificate shall determine and pay the student's Pell Grant assistance. However, the other institution may determine and pay the student's Pell Grant assistance if the institutions agree in writing to that arrangement.

(2) The institution which determines and pays the Pell Grant assistance shall—

(i) Take into account all courses which apply to the student's degree or certificate taken by the student at each eligible institution participating in the agreement when determining the student's enrollment status and cost of attendance; and

(ii) Maintain all records regarding the student's eligibility for and receipt of Pell Grant assistance.

(Authority: 20 U.S.C. 1070a)

§ 690.10 Administrative cost allowance to participating schools.

(a) Subject to available appropriations, the Secretary pays to each participating institution $5.00 for each student who receives a Pell Grant at that institution for an award year.

(b) All funds an institution receives under this section must be used solely for the institution's cost of administering the Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study and Perkins Loan, and ICL programs.

(Authority: 20 U.S.C. 1096a)

[50 FR 10717, Mar. 15, 1985, as amended at 52 FR 45736, Dec. 1, 1987]

§ 690.11 Pell Grant payments from more than one institution.

A student is not entitled to receive Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

(Authority: 20 U.S.C. 1070a)

Subpart B—Application Procedures for Determining Expected Family Contribution

SOURCE: 50 FR 10721, Mar. 15, 1985, unless otherwise noted.

§ 690.12 Application.

(a) As the first step to receiving a Pell Grant, a student shall apply on an approved form to the Secretary to have his or her expected family contribution determined. A copy of this form is not acceptable.

(b) The student shall provide the address of his or her residence unless the student is incarcerated and the educational institution has made special arrangements with the Secretary to receive relevant correspondence on behalf of the student. If such an arrangement is made, the student shall provide the address indicated by the institution.

(c) A student, and where required the student's parents or spouse, shall provide to the institution or the Secretary a copy of his or her Federal, State, and/or local income tax returns and any other documents, if requested by the Secretary or the institution for verification of the accuracy of the information submitted.

(d) For each award year the Secretary, through publication in the FEDERAL REGISTER, establishes deadline dates for submitting these applications and for making corrections to the information contained in the applications.

(Approved by the Office of Management and Budget under control number 1840-0110)

(Authority: 20 U.S.C. 1070a)

§ 690.13 Notification of expected family contribution.

The Secretary sends to each eligible applicant a "Student Aid Report" (SAR) which states the amount of the applicant's expected family contribution (student aid index) and information used in that calculation. If any of the information is incorrect, an applicant shall correct it according to procedures established by the Secretary through publication in the FEDERAL REGISTER.

(Approved by the Office of Management and Budget under control number 1840-0132)

(Authority: 20 U.S.C. 1070a)

§ 690.14 Applicant's request for recalculation of expected family contribution because of clerical or arithmetic error, or updating of projected data.

(a) An applicant may request a recalculation of his or her expected family contribution if he or she believes a clerical or arithmetic error has occurred, or if the information submitted was inaccurate when the application was signed.

(b) [Reserved]

(c) A request for recalculation must be made on an approved form and this form must be received by the Secretary no later than the deadline date established by the Secretary through publication in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1070a)

[50 FR 10721, Mar. 15, 1985, as amended at 51 FR 8954, Mar. 14, 1986]

Subpart C—Expected Family Contributions for Students With Special Conditions

§ 690.31 Special conditions affecting the expected family contribution determination for an independent student.

(a) For the 1990-91 award year, an independent student qualifies to have his or her expected family contribution determined using expected income data from 1990 if—

(1) The student was employed full-time in 1989 (at least 35 hours per week for a minimum of 30 weeks during 1989) and is no longer employed full-time;

(2) A spouse whose 1989 income from work must be reported under sections 411F(1) and 411(d)(2) of the Higher Education Act of 1965, as amended (HEA) has lost his or her job and remained unemployed for at least 10 weeks during 1990;

(3) The student or spouse whose 1989 income from work must be reported under sections 411F(1) and 411(d)(2) of the HEA has been unable to pursue normal income-producing activities for at least 10 weeks during 1990 because of the occurrence in 1989 or 1990 of—

(i) A disability; or

(ii) A natural disaster;

(4) The student or spouse whose income must be reported under sections 411F(1) and 411(d)(2) of the HEA received unemployment compensation or nontaxable income in 1989 (that would be used in the calculation of the student's expected family contribution) and had a complete loss for at least 10 weeks in 1990 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include welfare and court ordered child support;

(5) The student has become separated or divorced after he or she submitted his or her application;

(6) A spouse whose 1989 income must be reported under sections 411F(1) and 411(d)(2) of the HEA has died after the student has submitted his or her application; or

(7) The student's last surviving parent with whom the student had a dependency relationship, by virtue of not meeting the independent student criteria in section 411F(12)(A) of the HEA, has died after the student has submitted his or her application.

(b) If an independent student qualifies under one of the conditions in paragraph (a) of this section, the student's annual adjusted family income (AAFI) as defined in section 411F(1) of the HEA is determined using expected income data from 1990 instead of the sum received in the year immediately preceding the award year.

(Authority: Pub. L. 101-164)

[54 FR 14789, Apr. 12, 1989, as amended at 55 FR 12785, Apr. 5, 1990]

EFFECTIVE DATE NOTE: At 55 FR 12785, Apr. 5, 1990, in § 690.31, paragraph (a) introductory text was amended by removing "1989-90", and adding, in its place, "1990-91", and by removing "1989", and adding, in its place, "1990"; paragraphs (a) (2), (3), (4), and paragraph (b), were amended by removing "1989" each time it appeared, and adding, in its place, "1990"; paragraphs (a) (1), (2), (3), (4), and (6), were amended by removing "1988" each time it appeared, and adding, in its place, "1989"; and the authority citation was revised, effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 690.32 Special conditions affecting the expected family contribution determination for a dependent student.

(a) For the 1990-91 award year, a dependent student qualifies to have his or her expected family contribution determined using expected income data from 1990, if—

(1) A parent or stepparent whose 1989 income from work must be reported has lost his or her job and remained unemployed for at least 10 weeks during 1990;

(2) A parent or stepparent whose 1989 income from work must be reported under sections 411F(1) and 411(d)(2) of the HEA has been unable to pursue normal income-producing activities for at least 10 weeks during 1990 because of the occurrence in 1989 or 1990 of—

(i) A disability; or

(ii) A natural disaster;

(3) A parent or stepparent whose income must be reported under sections 411F(1) and 411(d)(2) received unemployment compensation or nontaxable income in 1989 (that would be used in the calculation of the student's expected family contribution) and had a complete loss for at least 10 weeks in 1990 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be paid by a public or private agency, a company, or a person because of a court order. Types of nontaxable benefits would include such items as Social Security benefits, welfare, and court ordered child support;

(4) The parent or parents of the student have become separated or divorced after the student submitted his or her application. If such a separation or divorce is between a parent and a stepparent, the stepparent's income must have been reportable on the previous application under sections 411F(1) and 411(d)(2) of the HEA for this condition to apply; or

(5) A parent or stepparent whose 1989 income must be reported under section 411F(1) of the HEA has died after the student has submitted his or her application. However, if the parent referred to in this paragraph is the last surviving parent with whom the student had a dependency relationship, by virtue of not meeting the independent student criteria in section 411F(12)(A) the student must file an application under § 690.31(a)(7) if he or she wishes to use income data from 1990.

(b) If a dependent student qualifies under one of the conditions in paragraph (a) of this section, the student's annual adjusted family income (AAFI), as defined in section 411F(1) of the HEA is determined using expected income data from 1990 instead of the sum received in the year immediately preceding the award year.

(Authority: Pub. L. 101-164)

[54 FR 14789, Apr. 12, 1989, as amended at 55 FR 12785, Apr. 5, 1990]

EFFECTIVE DATE NOTE: At 55 FR 12785, Apr. 5, 1990, in § 690.32, paragraph (a), the introductory text was amended by removing "1989-90", and adding, in its place, "1990-91", and by removing "1989", and adding, in its place, "1990"; paragraphs (a) (1), (2), (3), (5), and paragraph (b) were amended by removing "1989" each time it appeared, and adding, in its place, "1990"; paragraphs (a) (1), (2), (3), and (5), were amended by removing "1988" each time it appeared, and adding, in its place, "1989"; and the authority citation is revised.

Subparts D—E [Reserved]

Subpart F—Determination of Pell Grant Awards

SOURCE: 50 FR 10722, Mar. 15, 1985, unless otherwise noted.

§ 690.61 Submission process and deadline for student aid report.

(a) *Submission process.* (1) Except as provided in paragraph (a)(2) of this section, in order to receive a Pell Grant at an institution, a student shall submit a valid Student Aid Report (SAR) to that institution.

(2) An institution may make one disbursement of a student's Pell Grant without a valid SAR if it follows the procedures described in § 690.77.

(3) An institution is entitled to rely on SAR information except under conditions set forth in § 668.14(f) and 668.60.

(b) *Student Aid Report deadline.* (1) Except as noted in § 668.60, to receive a Pell Grant for an award year, a student shall submit the relevant parts of the SAR to his or her institution by June 30 of that award year.

(2) Except as noted in § 680.60, to receive a Pell Grant for an award year, a student shall submit the relevant parts of the SAR to an institution while he or she is still enrolled and eligible for payment at that institution.

(Authority: 20 U.S.C. 1070a)

[51 FR 43162, Nov. 28, 1986, as amended at 52 FR 38207, Oct. 14, 1987, 52 FR 45736, Dec. 1, 1987]

§ 690.62 Calculation of a Pell Grant.

(a) The amount of a student's Pell Grant for an academic year is based upon the payment and disbursement schedules published by the Secretary for each award year.

(b) At full funding, no payment may be made to a student if the student's Scheduled Pell Grant is less than $200.

(c) At less-than-full-funding, no payment may be made if—

(1) The student's Scheduled Pell Grant is less than $50; or

(2) The student's Scheduled Pell Grant at full funding would have been less than $200.

(Authority: 20 U.S.C. 1070a(a)(2))

§ 690.63 Calculation of a Pell Grant for a payment period.

(a) At an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours, a student's Pell Grant for each payment period is calculated by—

(1) Determining his or her enrollement status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule (full-time students), or one of the Disbursement Schedules (part-time students), as appropriate; and

(3)(i) Dividing the amount determined in paragraph (a)(2) of this section by the number of terms in the academic year unless the terms of an institution are not of equal length; or

(ii) If the terms of an institution are not of equal length, multiplying the amount determined in paragraph (a)(2) of this section by the following fraction:

$$\frac{\text{The length of the term in question}}{\text{The length of the academic year}}$$

(b) A single disbursement may not exceed 50 percent of the award determined in paragraph (a)(2) of this section. To ensure this result, an institution shall make multiple disbursements within a term, if that term is longer than half the academic year. Subsequent disbursements within that term may not be made until the student has completed the portion of the term for which he or she was initially paid.

(c) At an institution which measures progress by clock hours or which measures progress by credit hours or units but does not use semesters, trimesters, quarters or other academic terms, a student's Pell Grant for each payment period is calculated by—

(1) Determining the student's Scheduled Pell Grant; and

(2) Multiplying the Scheduled Pell Grant by—

$$\frac{\text{The number of credit or clock hours the student is expected to take in a payment period}}{\text{The number of credit or clock hours in an academic year}}$$

(d) Notwithstanding paragraphs (a), (b), and (c) of this section—

(1) A student may not receive a Pell Grant if the amount which the student would receive, projected on the basis of a full academic year, would be less than either $200 at full funding or $50 at less than full funding; and

(2) The amount of a student's award for an award year may not exceed his or her Scheduled Pell Grant award for that award year.

(Authority: 20 U.S.C. 1070a)

[50 FR 10717, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

§ 690.64 Calculation of a Pell Grant for a payment period which occurs in two award years.

(a) If a student enrolls in a payment period which is scheduled to occur in two award years— .

(1) The entire payment period must be considered to occur within one award year.

(2) The institution shall determine for each Pell Grant recipient the award year in which the payment period will be placed subject to the restrictions set forth in paragraph (a)(3) of this section.

(3) The institution shall place a payment period with more than six months scheduled to occur within one award year in that award year.

(4) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year.

(5) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(b) An institution may not make a payment which will result in the student receiving more than his or her Scheduled Pell Grant for an award year.

(c)(1) If a term-based institution offers a series of mini-sessions which occurs in two award years, the combined sessions must be treated as one term. A student may not receive more than one term's award for completing any combination of these mini-sessions.

(2) For such mini-sessions, a term-based institution shall determine the student's enrollment status for the entire term. That enrollment status shall be based upon—

(i) The total number of credits enrolled for in all sessions if that number is known when the award is calculated; or

(ii) A projected number of credits based upon the credits enrolled for in the first session, if the number of credits to be taken in subsequent sessions is unknown when the award is calculated.

(Authority: 20 U.S.C. 1070a)

§ 690.65 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a Pell Grant at one institution subsequently enrolls at a second institution in the same award year, the student shall submit an SAR to the second institution to receive a grant at the second institution. (The institution shall follow the procedures regarding transfer students set forth in 34 CFR 668.19.)

(b) The second institution shall calculate the student's award according to § 690.63.

(c) The second institution may pay a Pell Grant for only that portion of the award year in which a student is enrolled at that institution. The grant amount must be adjusted if necessary to ensure that the grant does not exceed the student's Scheduled Pell Grant for that award year.

(d) If a student's Scheduled Pell Grant at the second institution differs from the Scheduled Pell Grant at the first institution, the grant amount at the second institution is calculated as follows—

(1) The amount received at the first institution is compared to the Scheduled Pell Grant at the first institution to determine the percentage of the Scheduled Pell Grant that the student has received.

(2) That percentage is subtracted from 100 percent.

(3) The remaining percentage is the percentage of the Scheduled Pell Grant at the second institution to which the student is entitled.

(e) The student's Pell Grant for each payment period is calculated according to the procedures in § 690.63 unless the remaining percentage of the Scheduled Pell Grant at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student's Pell Grant is equal to that remaining percentage.

(f) A transfer student shall repay any amount received in an award year which exceeds his or her Scheduled Pell Grant.

(Authority: 20 U.S.C. 1070a)

[50 FR 10722, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986; 52 FR 45736, Dec. 1, 1987]

§ 690.66 Correspondence study.

A student enrolled in an eligible program of study by correspondence must be paid according to the following procedures:

(a) The institution shall determine the length of each correspondence program it offers by preparing a written schedule for submission of lessons, reflecting a workload of at least 12 hours of preparation per week.

(b)(1) For an institution, if there is not a required period of residential training in the program, a student's Pell Grant for an academic year is calculated by—

(i) Determining the student's Scheduled Pell Grant; and

(ii) Multiplying the Schedule Pell Grant by one-half.

(2) An academic year must consist of two payment periods. The first payment period must be the period of time in which the student completes the first half of his or her academic year, or program if the program is less than an academic year. The second payment period must be the period of time in which the student completes the second half of the academic year or program.

(3) For the first payment period, the institution shall pay the student one-half of the amount calculated in paragraph (b)(1)(ii) of this section after he or she has submitted 25 percent of the lessons or otherwise completed 25 percent of the work scheduled for the academic year, or for the program if the program is less than an academic year.

(4) The institution shall make the final payment for the second payment period after the student has submitted 75 percent of the lessons or otherwise completed 75 percent of the work scheduled for the academic year or for the program.

(c)(1) For an institution, if there is a required period of residential training in the program, a student's Pell Grant for an academic year is calculated by—

(i) Determining the student's Scheduled Pell Grant, and;

(ii) Multiplying the Scheduled Pell Grant by one-half.

(2) The non-residential portion of an academic year must consist of two payment periods. The first payment period must be the period of time in which the student completes the first half of his or her academic year or the non-residential portion of the program if it is less than an academic year. The second payment period must be the period of time in which the student completes the second half of the academic year or non-residential portion of the program.

(3) For the first payment period, the institution shall pay the student one-half of the amount calculated in paragraph (c)(1)(ii) of this section after he or she has submitted 25 percent of the non-residential lessons or otherwise

completed 25 percent of the work scheduled for the academic year or for the program if the program is less than an academic year.

(4) The institution shall make the final payment (for the non-residential portion of the program) for the second payment period after the student has submitted 75 percent of the non-residential lessons or otherwise completed 75 percent of the work scheduled for the academic year or for the program.

(5) A student's Pell Grant disbursement for the residential portion of the program is calculated according to the procedures in § 690.63(c) for a student enrolled in a regular course of study at an institution that measures progress by clock hours.

(Authority: 20 U.S.C. 1070a)

[50 FR 10722, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

Subpart G—Administration of Grant Payments

SOURCE: 50 FR 10724, Mar. 15, 1985, unless otherwise noted.

§ 690.71 Scope.

This subpart deals with program administration by an institution of higher education. An institution shall enter into a program participation agreement with the Secretary so that is may calculate and pay Pell Grant awards to students.

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

§ 690.72 Institutional participation agreement.

(a) The Secretary may enter into an agreement with an institution of higher education under which it will calculate and pay Pell Grant awards to its students. This agreement is on a standard form provided by the Secretary which contains the necessary terms to carry out this part.

(b) The Secretary sends Payment and Disbursement Schedules for each award year to an institution that has entered into an agreement under paragraph (a) of this section.

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

EDITORIAL NOTE: Information collection requirements contained in § 690.72 will become effective after approval by the Office of Management and Budget.

§ 690.73 Termination of institutional participation agreement.

(a) *Termination by the Secretary.* The Secretary may terminate the agreement with an institution by giving the institution—

(1) 30 days written notice; or

(2) Less than 30 days written notice if shorter notice is necessary to prevent the likelihood of a substantial loss of funds to the Federal government or to students.

(b) *Information required.* An institution shall provide the following information to the Secretary if the Secretary terminates the agreement:

(1) The name and enrollment status of each eligible student who submitted a valid SAR to the institution before the termination date.

(2) The amount of funds the institution paid to Pell Grant recipients for the award year in which the agreement is terminated.

(3) The amount due to each student eligible to receive a Pell Grant through the end of the award year.

(4) An accounting of Pell Grant expenditures to the date of termination.

(c) *Termination by the institution.* An institution may terminate the agreement by giving the Secretary written notice. The termination becomes effective on June 30 of that award year. The institution shall carry out the agreement for the remainder of that award year.

(d) *Termination because of a change in ownership which results in a change of control.* The agreement automatically terminates when an institution changes ownership which results in a change of control. The Secretary may enter into an agreement with the new owner if the institution complies with requirements set forth in Subpart B of the Student Assistance General Provisions (34 CFR Part 668).

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

§ 690.74 Provision of funds to institutions.

The Secretary provides funds to an institution for each award year in advance or by way of reimbursement during the course of that year, based on the Secretary's determination of the institution's need for funds to pay Pell Grants or its need for reimbursement for Pell Grants already paid.

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 51 FR 43162, Nov. 28, 1986]

§ 690.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a Pell Grant to an eligible student only after it determines that the financial aid transcript requirements of 34 CFR 668.19 have been met, and the student—

(1) Qualifies as an eligible student under 34 CFR 668.7;

(2) Is enrolled as at least a half-time undergraduate student; and

(3) Has completed required clock hours for which he or she has been paid a Pell Grant, if the student is enrolled in an eligible program that is measured in clock hours.

(b) If an eligible student submits an SAR to the institution and becomes ineligible before receiving a payment, the institution may pay the student only the amount that it determines could have been used for educational purposes before the student became ineligible.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination before the end of the payment period, the institution may pay a Pell Grant to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination after the end of the payment period, the institution may neither pay the student a Pell Grant for that payment period nor make adjustments in subsequent Pell Grant payments to compensate for the loss of aid for that period.

(e) A member of a religious order, community, society, agency of or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution of at least $3,000 if that religious order—

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(2) Provides subsistence support to its members, or has directed the member to pursue the course of study.

(Authority: 20 U.S.C. 1070a)

[52 FR 45736, Dec. 1, 1987]

§ 690.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds due a student for any completed period in one lump sum. The student's enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070a)

§ 690.77 Initial disbursement of a Pell Grant in an award year without a valid SAR.

(a) An institution may make one disbursement within an award year of a student's Pell Grant before receiving the student's valid SAR if the institution—

(1) Receives a student's application information;

(2) Does not have documentation that indicates that the application information is inaccurate; and

(3) Receives an SAI—

(i) From the Secretary; or

(ii) Beginning with the 1988–89 award year application cycle, from an organization that has a contract to transmit application data to the Secretary.

(b) If an institution receives a student's application information and his or her SAI from the Secretary or, beginning with the 1988–89 award year application cycle, from an organization that has a contract to transmit application data to the Secretary, but the institution has documentation that indicates that the application information is inaccurate, the institution may make one disbursement within an award year of a student's Pell Grant before receiving the student's valid SAR if the institution—

(1) Resolves the inconsistencies between its documentation and the student's application information;

(2) Recalculates the student's SAI based on correct information;

(3) Makes the disbursement of the student's Pell Grant for the first payment period based on the recalculated SAI; and

(4) Reports the changes in the student's application information and the recalculated SAI to the Secretary within deadline established by the Secretary.

(c)(1) If an institution chooses to make a disbursement under paragraph (a) or (b) of this section, it shall be liable for that disbursement if it does not receive a valid SAR for the student for that award year.

(2) If an institution chooses to make a disbursement under paragraph (b) of this section, the institution and the student shall be liable for any overpayment caused by an incorrect recalculation of the student's SAI.

(3) If a student receives an overpayment as a result of a disbursement made under paragraph (a) or (b) of this section, the institution shall eliminate the overpayment by following the procedures described in 34 CFR 668.61(a).

(Approved by the Office of Management and Budget under OMB Control No. 1840-0536)

(Authority: 20 U.S.C. 1070a)

[52 FR 38208, Oct. 14, 1987]

§ 690.78 Method of disbursement—by check or credit to a student's account.

(a)(1) The institution may pay a student directly by check or by crediting his or her institutional account.

(2) Unless a student has agreed otherwise, the amount an institution may credit to a student's account may not exceed the amount the student is required to pay the institution for—

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board; and

(iii) Housing, if the student contracts with the institution for housing.

(3) An institution may not require a student to grant permission to credit his or here account for the costs of other goods and services the institution provides to the student.

(4) The institution shall notify the student of the amount he or she can expect to receive and how that amount will be paid.

(b)(1) The institution may not make a payment to a student for a payment period until the student is registered for classes for that period.

(2) The earliest an institution may directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution may credit a registered student's account is three weeks before the first day of classes of a payment period.

(c) The institution shall return to the Pell Grant account any funds paid to a student who, before the first day of classes—

(1) Officially or unofficially withdraws; or

(2) Is expelled.

(d)(1) If an institution intends to pay a student directly, it shall notify him or her before the payment is made when it will pay the Pell Grant award.

(2) If a student does not pick up the check on time, the institution shall still pay the student if he or she requests payment within 15 days after the last date that his or her enrollment ends in that award year.

(3) If the student has not picked up his or her payment at the end of the 15 day period, the institution may credit the student's account for any amount owed to the institution for the award year.

(4) A student forfeits the right to receive the payment if he or she does not pick up a payment by the end of the 15 day period.

(5) Notwithstanding paragraph (d)(4) of this section, the institution may, if it chooses, pay a student who did not pick up his or her payment, through the next payment period.

(Approved by the Office of Management and Budget under OMB Control No. 1840-0536)

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 52 FR 38208, Oct. 14, 1987]

§ 690.79 Recovery of overpayments.

(a)(1) The student is liable for any Pell Grant overpayment made to him or her.

(2) The institution is liable for any overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this Part. The institution shall restore those funds to its Pell Grant account even if it cannot collect the overpayment from the student.

(b) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by—

(1) Making a reasonable effort to contact the student and recover the overpayment; and, if unsuccessful,

(2) Providing the Secretary with the student's name, social security number, amount of overpayment, and other relevant information.

(c) If an institution refers a student who received an overpayment for which it is not liable to the Secretary for recovery, the student remains ineligible, for further Title IV student financial assistance for attendance at that institution until final resolution of the overpayment.

(Authority: 20 U.S.C. 1070a)

§ 690.80 Recalculation of a Pell Grant award.

(a) *Change in expected family contribution.* (1) The institution shall recalculate a Pell Grant award for the entire award year if the student's expected family contribution changes at any time during the award year. The change may result from—

(i) The correction of a clerical or arithmetic error under § 690.14;

(ii) Extraordinary circumstances which affect the expected family contribution under § 690.39 or § 690.48; or

(iii) A correction based on information required in § 690.12 or § 690.77.

(2) Except as described in § 690.77(f)(1), the institution shall adjust the student's award when an overaward or underaward is caused by the change in the expected family contribution. That adjustment must be made—

(i) Within the same award year—if possible—to correct any overpayment or underpayment; or

(ii) During the next award year to correct any overpayment that could not be adjusted during the year in which the student was overpaid.

(b) *Change in enrollment status.* (1) If the student's enrollment status changes from one academic term to another term within the same award year, the institution shall recalculate the Pell Grant award for the new payment period taking into account any changes in the cost of attendance.

(2)(i) If the student's projected enrollment status changes during a payment period after the student has begun attendance in all of his or her classes for that payment period, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. Any such recalculations must take into account any changes in the cost of attendance. If such a policy is established, it must apply to all students.

(ii) If a student's projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution shall recalculate the student's enrollment status to reflect only those classes for which the student actually began attendance.

(c) *Change in cost of attendance.* If the student's cost of attendance changes at any time during the award year and his or her enrollment status remains the same, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. If such a policy is established, it must apply to all students.

(Authority: 20 U.S.C. 1070a)

§ 690.81 Fiscal control and fund accounting procedures.

(a)(1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall account for the receipt and expenditure of Pell Grant funds in accordance with generally accepted accounting principles.

(b) A separate bank account for Pell Grant funds is not required. However, the institution shall notify any bank in which it deposits Pell Grant funds of all accounts in that bank in which it deposits Federal funds. This notice must be given by including in the name of each such account that Federal funds are deposited therein.

(c) Except for funds received for administrative expenses, funds received by an institution under this part may be used only to pay Pell Grants to students. The funds are held in trust by the institution for the intended student beneficiaries and may not be used or hypothecated for any other purpose.

(Approved by the Office of Management and Budget under control number 1840-0536)

(Authority: 20 U.S.C. 1070a)

[50 FR 10724, Mar. 15, 1985, as amended at 53 FR 49147, Dec. 6, 1988]

§ 690.82 Maintenance and retention of records.

(a) Each institution shall maintain adequate records (including those related to verification) which include the fiscal and accounting records that are required under § 690.81, records required for audits in 34 CFR 668.23, the Student Aid Report of each student applying for a Pell Grant, and records indicating—

(1) The eligibility of all enrolled students who have submitted valid SARs to the institution;

(2) The name and social security number of and the amount paid to each student;

(3) The amount and date of each payment;

(4) The amount and date of any overpayment that has been restored to the program account;

(5) Each student's cost of attendance;

(6) How each student's full or part-time enrollment status was determined; and

(7) Each student's enrollment period.

(b)(1) The institution shall make the records listed in paragraph (a) of this section available for inspection by the Secretary's authorized representative at any reasonable time in the institution's offices. It shall keep the records for each award year for five years after that award year has ended.

(2) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(c) The institution shall keep records involved in any claim or expenditure questioned by Federal audit until resolution of any audit questions.

(d) An institution may substitute microform copies in lieu of original records in meeting the requirements of this section.

(Approved by the Office of Management and Budget under control number 1840-0132)

(Authority: 20 U.S.C. 1070a, 1232f)

[50 FR 10724, Mar. 15, 1985, as amended at 52 FR 45736, Dec. 1, 1987]

§ 690.83 Submission of reports.

(a) An institution shall submit to the Secretary all SAR Payment Documents for a given award year by December 31 following the end of that award year.

(b) An institution shall submit in accordance with deadline dates established by the Secretary, through publication in the FEDERAL REGISTER, other reports and information the Secretary requires in connection with the funds advanced to it and shall comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(Approved by the Office of Management and Budget under control number 1840-0132)

(Authority: 20 U.S.C. 1070a)

§ 690.84 Audit and examination.

(a) *Federal audits.* The institution shall give the Secretary, the Comptroller General of the United States, or their duly authorized representatives, access to the records specified in § 690.81 and § 690.82 and to any other pertinent books, documents, papers, and records.

(b) *Non-Federal audits.* (1) The institution shall have a financial and compliance audit of Pell Grant Program transactions. The audit must be conducted by an independent auditor in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office publication, *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.* Procedures for audits are contained in audit guides developed by, and available from the Office of the Inspector General of the Department. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations and GAO's standards.

(2) The audit must be completed not less frequently than once every two years, and be submitted to the Secretary within 9 months of the end of the audit period. Each audit must cover the institution's activities for the entire period since the preceding audit.

(3) The institution must have an audit performed at least once very two years.

(c) *Submission and access.* The institution shall submit audit reports to the institution's local regional office of the Department of Education's Audit Agency. It shall give the Audit Agency and the Secretary access to records or other documents necessary to the audit's review.

(Authority: 20 U.S.C. 1070a)

PART 692—STATE STUDENT INCENTIVE GRANT PROGRAM

Subpart A—General

Sec.
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Subpart C—How Does a State Apply To Participate in This Program?

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Subpart D—How Does a State Administer its Community Service Learning Job Program?

692.30 How does a State administer its community service-learning job program?

Subpart E—How Does a State Select Students Under This Program?

692.40 What are the requirements for student eligibility?
692.41 What standards may a State use to determine substantial financial need?

AUTHORITY: 20 U.S.C 1070c-1070c-1070c-4, unless otherwise noted.

SOURCE: 52 FR 45433, Nov. 27, 1987, unless otherwise noted.

Subpart A—General

§ 692.1 What is the State Student Incentive Grant Program?

The State Student Incentive Grant Program assists States in providing grants and work-study assistance to eligible students who attend institutions of higher education and have substantial financial need. The work-study assistance is provided through campus-based community service work learning study programs, hereinafter referred to as community service-learning job programs.

(Authority: 20 U.S.C. 1070c-1070c-4)

§ 692.2 Who is eligible to participate in the State Student Incentive Grant Program?

(a) *State participation.* A State that meets the requirements in §§ 692.20 and 692.21 is eligible to receive payments under this program.

(b) *Student participation.* A student must meet the requirements of § 692.40 to be eligible to receive assistance from a State under this program.

(Authority: 20 U.S.C. 1070c-1)

§ 692.3 What regulations apply to the State Student Incentive Grant Program?

The following regulations apply to the State Student Incentive Grant Program:

(a) The regulations in this Part 692.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants) except for Subpart G, Part 76 (State-Administered Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(c) The regulations in 34 CFR Part 604 that implement section 1203 of the HEA (Federal-State Relationship Agreements).

(d) The Student Assistance General Provisions in Subpart A of 34 CFR Part 668.

(Authority: 20 U.S.C. 1070c)

[52 FR 45433, Nov. 27, 1987, as amended at 55 FR 21716, May 25, 1990]

EFFECTIVE DATE NOTE: At 55 FR 21716, May 25, 1990, § 692.3(b) was amended by removing the word "and" and adding ", and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities)" before the period at the end of the sentence, effective either 45 days after publication in the FEDERAL REGISTER or later if Congress takes certain adjournments. The Department of Education will publish a document in the FEDERAL REGISTER at a later date, announcing the effective date.

§ 692.4 What definitions apply to the State Student Incentive Grant Program?

The following definitions apply to the regulations in this part:

(a) *Definitions in 34 CFR Part 668.* The following terms used in this part are defined in 34 CFR Part 668:

Academic year (§ 668.2).

Campus-based programs (§ 668.2).

Enrolled (§ 668.2).

Guaranteed Student Loan Program (§ 668.2).

HEA (§ 668.2).

Income Contingent Loan Program (§ 668.2).

Pell Grant Program (§ 668.2).

PLUS Program (§ 668.2).

Public or private nonprofit institution of higher education (§ 668.3).

Postsecondary vocational institution (§ 668.5).

Secretary (§ 668.2).

State (§ 668.2).

(b) *Other definitions that apply to this part.* The following additional definitions apply to this part:

Full-time student means a student carrying a full-time academic workload—other than by correspondence—as measured by both of the following:

(1) Coursework or other required activities, as determined by the institution that the student attends or by the State.

(2) The tuition and fees normally charged for full-time study by that institution.

Nonprofit has the same meaning under this part as the same term defined in 34 CFR 77.1 of EDGAR.

(Authority: 20 U.S.C. 1070c-1070c-4)

Subpart B—What Is the Amount of Assistance and How May It Be Used?

§ 692.10 How does the Secretary allot funds to the States?

(a)(1) The Secretary allots to each State participating in the SSIG program an amount which bears the same ratio to the Federal SSIG funds appropriated as the number of students in that State who are "deemed eligible" to participate in the State's SSIG program bears to the total number of students in all States who are "deemed eligible" to participate in the SSIG program, except that no State may receive less than it received in fiscal year 1979.

(2) If the Federal SSIG funds appropriated for a fiscal year are not sufficient to allot to each State the amount of Federal SSIG funds it received in fiscal year 1979, the Secretary allots to each State an amount which bears the same ratio to the amount of Federal SSIG funds appropriated as the amount of Federal SSIG funds that State received in fiscal year 1979 bears to the amount of Federal SSIG funds all States received in fiscal year 1979.

(b) For the purpose of paragraph (a)(1) of this section, a student is "deemed eligible" to participate in a State's SSIG program if the student is in attendance at an institution that is eligible to participate in the State's program.

(Authority: 20 U.S.C. 1070c)

§ 692.11 For what purposes may a State use its payments under the program?

A State may use the funds it receives under this part only to make grants to students and to pay wages or salaries to students in community service-learning jobs.

(Authority: 20 U.S.C. 1070c)

Subpart C—How Does a State Apply To Participate in This Program?

§ 692.20 What must a State do to receive an allotment under this program?

(a) To participate in the State Student Incentive Grant Program, a State shall enter into an agreement with the Secretary under section 1203 of the HEA (Federal-State Relationship Agreement).

(b) For each fiscal year that it wishes to participate, a State shall submit an application that contains information that shows that its State Student Incentive Grant Program meets the requirements of § 692.21.

(c)(1) Except as provided in paragraph (c)(2) of this section, the State shall submit its application through the State agency designated in its Federal-State Relationship Agreement to administer its State Student Incentive Grant Program as of July 1, 1985.

(2) If the Governor of the State so designates, and notifies the Secretary through a modification to the State's Federal-State Relationship Agreement, the State may submit its application under paragraph (b) of this section through an agency that did not administer its State Student Incentive Grant Program as of July 1, 1985.

(Approved by the Office of Management and Budget under control number 1840-0544)

CROSS-REFERENCE: See 34 CFR Part 604, Federal-State Relationship Agreements.

(Authority: 20 U.S.C. 1070c-2(a))

§ 692.21 What requirements must be met by a State program?

To receive a payment under this program for any fiscal year, a State must have a program that—

(a) Is administered by a single State agency in accordance with the Federal-State Relationship Agreement under section 1203 of the HEA.

(b) Provides assistance only to students who meet the eligibility requirements in § 602.40;

(c) Provides that assistance under this program to a full-time student will not be more than $2,500 for each academic year;

(d) Provides for the selection of students to receive assistance on the basis of substantial financial need determined annually by the State on the basis of standards that the State establishes and the Secretary approves.

CROSS-REFERENCE: See § 692.41.

(e) Provides that all public or private nonprofit institutions of higher education and all postsecondary vocational institutions in the State are eligible to participate unless that participation is in violation of—

(1) The constitution of the State; or

(2) A State statute that was enacted before October 1, 1978;

(f) Provides that, if a State allocates funds to an institution under a formula which is based in part on the financial need of less-than-full-time students enrolled in the institution, a reasonable portion of the institution's allocation must be awarded to those students;

(g) Provides that—

(1) The State will pay an amount for grants and work-study jobs under this part for each fiscal year that is not less than the payment to the State under this part for that fiscal year; and

(2) The amount that the State expends during a fiscal year for grants and work-study jobs under this program represents an additional amount for grants and work-study jobs for students attending institutions of higher education over the amount expended by the State for those activities during the fiscal year two years prior to the fiscal year in which the State first received funds under this program;

(h) Provides for State expenditures under the State program of an amount that is not less than—

(1) The average annual aggregate expenditures for the preceding three fiscal years; or

(2) The average annual expenditure per full-time equivalent student for those years; and

(i) Provides for reports to the Secretary that are necessary to carry out the Secretary's functions under this part.

(Approved by the Office of Management and Budget under control number 1840-0544)

(Authority: 20 U.S.C. 1070c-2)

Subpart D—How Does a State Administer Its Community Service-Learning Job Program?

§ 692.30 How does a State administer its community service-learning job program?

(a)(1) Each year, a State may use up to 20 percent of its allotment for a community service-learning job program that satisfies the conditions set forth in paragraph (b) of this section.

(2) A student who receives assistance under this section must receive compensation for work and not a grant.

(b)(1) The community service-learning job program must be administered by institutions of higher education in the State.

(2) Each student employed under the program must be employed in work in the public interest by an institution itself or by a Federal, State, or local public agency or a private nonprofit organization under an arrangement between the institution and the agency or organization.

(c) Each community service-learning job must—

(1) Provide community service as described in paragraph (d) of this section;

(2) Provide participating students community service-learning opportunities related to their educational or vocational programs or goals;

(3) Not result in the displacement of employed workers or impair existing contracts for services;

(4) Be governed by conditions of employment that are considered appropriate and reasonable, based on such factors as type of work performed, geographical region, and proficiency of the employee;

(5) Not involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction; and

(6) Not pay any wage to a student that is less than the current Federal minimum wage as mandated by section 6(a) of the Fair Labor Standards Act of 1938.

(d) For the purpose of paragraph (c)(1) of this section, "community service" means direct service, planning, or applied research that is—

(1) Identified by an institution of higher education through formal or informal consultation with local nonprofit, governmental, and community-based organizations; and

(2) Designed to improve the quality of life for residents of the community served, particularly low-income residents, in such fields as health care, child care, education, literacy training, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, and community improvement.

(e) For the purpose of paragraph (d)(2) of this section, "low-income residents" means—

(1) Residents whose taxable family income for the year before the year in which they are scheduled to receive assistance under this part did not exceed 150 percent of the amount equal to the poverty level determined by using criteria of poverty established by the United States Census Bureau; or (2) Residents who are considered low-income residents by the State.

(2) Residents who are considered low-income residents by the State.

(Authority: 20 U.S.C. 1070c-2, 1070-4)

Subpart E—How Does a State Select Students Under This Program?

§ 692.40 What are the requirements for student eligibility?

To be eligible for assistance, a student must—

(a) Meet the relevant eligibility requirements contained in 34 CFR 668.7; and

(b) Have substantial financial need as determined annually in accordance with the State's criteria approved by the Secretary.

(Approved by the Office of Management and Budget under control number 1840-0544)

(Authority: 20 U.S.C. 1070c-2, 1091)

§ 692.41 What standards may a State use to determine substantial financial need?

A State determines whether a student has substantial financial need on the basis of criteria it establishes that are approved by the Secretary. A State may define substantial financial need in terms of family income, expected family contribution, and relative need as measured by the difference between the student's cost of attendance and the resources available to meet that cost. To determine substantial need, the State may use—

(a) A system for determining a student's financial need under the Pell Grant, Guaranteed Student Loan, PLUS, or campus-based programs;

(b) The State's own needs analysis system if approved by the Secretary; or

(c) A combination of these systems, if approved by the Secretary.

(Authority: 20 U.S.C. 1070c-2)

CHAPTER VII—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT, DEPARTMENT OF EDUCATION

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PART 700—EDUCATIONAL RESEARCH GRANT PROGRAM

Subpart A—General

Sec.

700.1 What is the Educational Research Grant Program?
700.2 Who is eligible for an award?
700.3 What types of activities may the secretary fund?
700.4 What priorities may the secretary establish?
700.5 What regulations apply?
700.6 What definitions apply?

Subpart B—How Does One Apply For An Award?

700.10 What types of applications may one submit?
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Subpart C—How Does The Secretary Make An Award?

700.20 How does the secretary evaluate an application?
700.21 What special procedures does the secretary use to evaluate an unsolicited application?
700.22 What selection criteria does the secretary use?
700.23 What additional procedures may the secretary use to determine which applications will be selected for funding?
700.24 What additional factors may the secretary consider in making awards for invitational applications and field-initiated applications?

Subpart D—What Conditions Must Be Met After An Award?

700.30 What restrictions apply to the use of funds awarded under this program?

AUTHORITY: 20 U.S.C. 1221e, unless otherwise noted.

SOURCE: 53 FR 27108, July 18, 1988, unless otherwise noted.

Subpart A—General

§ 700.1 What is the Educational Research Grant Program?

The Educational Research Grant Program supports scientific inquiry designed to advance educational theory and practice.

(Authority: 20 U.S.C. 1221e)

§ 700.2 Who is eligible for an award?

The following are eligible for awards under the Educational Research Grant Programs:

(a) Institutions of higher education.

(b) Public and private organizations, institutions, and agencies.

(c) Individuals.

(Authority: 20 U.S.C. 1221e)

§ 700.3 What types of activities may the Secretary fund?

(a) The Secretary may fund applications that include, but are not limited to, those designed to carry out one or more of the following activities:

(1) Educational research.

(2) Dissemination of educational research.

(3) Training of individuals in educational research.

(b) For each competition, the Secretary may restrict applications to one or more of the activities in paragraph (a) of this section.

(c) For each competition for invitational applications announced in the FEDERAL REGISTER, the Secretary may restrict educational research projects to one or more of the following activities:

(1) Basic research.
(2) Applied research.
(3) Development.
(4) Planning.
(5) Surveys.
(6) Assessments.
(7) Evaluations.
(8) Investigations.
(9) Experiments.
(10) Demonstrations in education and fields related to education.

(Authority: 20 U.S.C. 1221e)

§ 700.4 What priorities may the Secretary establish?

(a) For each competition for invitational applications, the Secretary may select funding priorities from a list of biennial research priorities published in the FEDERAL REGISTER for public comment pursuant to section 405(b)(4) of the Act. These biennial research priorities may include one or more priorities from paragraph (b) of this section.

(b) The Secretary may also select one or more funding priorities from the following list of priorities or combinations of these priorities:

(1) Learning.

(2) Teaching.

(3) Technology in education.

(4) Instructional processes and materials, including textbooks and computer software for instruction.

(5) Education and staff development for teachers, administrators, and other education staff.

(6) Organization and management of schools, including effective education leadership.

(7) Evaluation and indicators, including testing, measurement, and standards of performance.

(8) Governance of education, including school board policies and practices.

(9) Educational finance and productivity.

(10) Education and the law.

(11) Dissemination and knowledge utilization in education.

(12) Improvement in education, including State and local reform initiatives.

(13) Student achievement, including students' motivation to learn, their failure to learn, and their failure to attend school and graduate.

(14) Home, family, cultural, and community influences on education, including parental choice and involvement in schooling.

(15) Education, work, and careers.

(16) Equity and excellence, including the effects of ability grouping.

(17) Guidance and counseling.

(18) International education.

(19) English literacy, including reading, writing, and language skills.

(20) Mathematics.

(21) Science.

(22) Foreign languages.

(23) Early childhood education.

(24) History and social sciences including economics, geography, political science, sociology, anthropology, and psychology.

(25) Physical and health education.

(26) Humanities, including music, art, literature, and dance.

(27) Citizenship and character education.

(28) Elementary education.

(29) Secondary education.

(30) Early adolescent education.

(31) Adolescent education.

(32) Postsecondary education.

(33) Adult and continuing education.

(34) Teachers.

(35) School professionals and personnel.

(36) Public and private institutions.

(37) School discipline and crime in schools.

(38) Education of special populations, including the educationally disadvantaged or students at-risk, those with limited English proficiency, the handicapped, immigrants, and the academically gifted and talented.

(Authority: 20 U.S.C. 1221e)

§ 700.5 What regulations apply?

The following regulations apply to grants under the Educational Research Grant Program:

(a) The Education Department General Administrative Regulations (EDGAR) 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board) and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government).

(b) The regulations in this Part 700.

(Authority: 20 U.S.C. 1221e)

§ 700.6 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Contract
Department
EDGAR
Equipment
Facilities
Grant
Grantee
Nonprofit
Private
Project
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Act means the General Education Provisions Act, as amended.

Educational research means basic and applied research, development, planning, surveys, assessments, evaluations, investigations, experiments, and demonstrations in the field of education and related fields.

Field-initiated applications means applications to conduct educational research on a topic or topics chosen by the applicant.

Institution of higher education means an institution of higher education as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1141(a))

Invitational applications means applications meeting one or more priorities established by the Secretary in accordance with § 700.4 and 34 CFR 75.105.

Unsolicited application means an application not specifically invited by the Secretary, to carry out one or more of the activities listed in § 700.3(a).

(Authority: 20 U.S.C. 1221e)

Subpart B—How Does One Apply For An Award?

§ 700.10 What types of applications may one submit?

An eligible party listed in § 700.2 may submit one or more of the following types of applications for awards under this program:

(a) An invitational application in response to an application notice that establishes one or more priorities in accordance with § 700.4 and 34 CFR 75.105.

(b) A field-initiated application in response to an application notice in accordance with 34 CFR 75.100.

(c) An unsolicited application as described in § 700.11.

(Authority: 20 U.S.C. 1221e)

§ 700.11 When may one submit an unsolicited application?

An applicant may submit an unsolicited application at any time during a fiscal year.

(Authority: 20 U.S.C. 1221e)

Subpart C—How Does the Secretary Make an Award?

§ 700.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates separately invitational applications, field-initiated applications, and unsolicited applications.

(b) (1) The Secretary evaluates applications on the basis of the selection criteria in § 700.22.

(2) The Secretary awards up to 100 points, including a reserved 25 points to be distributed in accordance with paragraph (b)(4) of this section, based on the selection criteria in § 700.22.

(3) Subject to paragraph (b)(4) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading of the criterion.

(4) For each competition announced in the FEDERAL REGISTER for awards for invitational applications and field-initiated applications, the Secretary distributes the reserved 25 points among the criteria in § 700.22, as announced in a notice published in the FEDERAL REGISTER, and for unsolicited applications, the Secretary distributes the reserved 25 points in accordance with § 700.21(d).

(Authority: 20 U.S.C. 1221e)

§ 700.21 What special procedures does the Secretary use to evaluate an unsolicited application?

(a) At any time during a fiscal year, the Secretary may accept and consider for funding unsolicited applications, for projects that do not meet a priority established in accordance with § 700.4 (a) and (b), and that have not been submitted under a competition for field-initiated applications for that fiscal year.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the FEDERAL REGISTER.

(c) The Secretary selects an unsolicited application for funding in accordance with the procedures in § 700.20.

(d) The Secretary assigns 15 of the reserved 25 points under § 700.20(b)(2) to the selection criteria in § 700.22(f)

(Significance) so that the maximum number of possible points for this criterion is 30 and 10 of the reserved points to the selection criterion in § 700.22(g) (Technical soundness) so that the maximum number of possible points for this criterion is 25.

(Authority: 20 U.S.C. 1221e)

§ 700.22 What selection criteria does the Secretary use?

(a) *Plan of operation* (10 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) The quality of the applicant's plans to use its resources and personnel to achieve each objective of the project; and

(3) The extent to which the applicant will equitably address the educational needs of students and educators in both public and private educational institutions.

(b) *Quality of key personnel* (20 points). (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (b)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(c) *Budget and cost-effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives, design, and potential significance of the project.

(d) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(f) *Significance* (15 points). (1) The Secretary reviews each application to determine the significance of the of the proposed project.

(2) The Secretary determines the project's potential to make a significant contribution to American education, as measured by factors such as—

(i) Importance of the proposed project from the standpoint of basic knowledge or of problems in American education;

(ii) The likely magnitude of the addition that will be made to knowledge or educational practices if the project is successful, including the extent to which the proposed outcomes can be broadly applied.

(iii) The extent to which the project involves creative or innovative approaches that complement or are alternatives to existing approaches to the project's problem area; and

(iv) The extent to which the project is designed to yield products and outcomes that can be disseminated and utilized in other settings, such as information, materials, processes, or techniques.

(g) *Technical soundness* (15 points). (1) The Secretary reviews each appli-

best copy available

cation to determine the technical soundness of the proposed activities.

(2) The Secretary determines—

(i) The adequacy of the project's design, methodology, instrumentation, and data analysis plan, as applicable;

(ii) The extent to which the application exhibits a thorough knowledge of current research and development concepts, theories, and outcomes and relates these to the proposed activity; and

(iii) The extent to which, where appropriate, the perspectives of a variety of disciplines are used.

(h) *Applicant's commitment and capacity* (0 points). The Secretary may assign points to this criterion pursuant to § 700.20(b)(3). The Secretary determines the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Approved by the Office of Management and Budget under control number 1850-0602)

(Authority: 20 U.S.C. 1221e)

§ 700.23 What additional procedures may the Secretary use to determine which applications will be selected for funding?

(a) After review of applications and preparation of a rank order of applications on the basis of the selection criteria in § 700.22 and in accordance with 34 CFR 75.217(b) and (c), the Secretary selects highly rated applications for further consideration on the basis of the factors in 34 CFR 75.217(d).

(b) For field-initiated applications, the Secretary reviews each application chosen for further consideration to determine whether the proposed activities would address educational problems of national importance. The Secretary determines the relative importance of field-initiated applications and selects only those applications that propose activities that are of the greatest national importance.

(c) In determining the order in which applications chosen for further consideration may be selected for funding under 34 CFR 75.217(d), the Secretary may consider the recommendations of experts.

(Authority: 20 U.S.C. 1221e)

§ 700.24 What additional factors may the Secretary consider in making awards for invitational applications and field initiated applications?

In addition to the criteria in §§ 700.22 and 700.23(b), the Secretary may consider the following factors in selecting invitational applications and field-initiated applications for funding:

(a) The geographical distribution of projects funded under a particular competition or under this program.

(b) The diversity of activities or projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 1221e)

Subpart D—What Conditions Must Be Met After an Award?

§ 700.30 What restrictions apply to the use of funds awarded under this program?

Of the funds made available through an award under the program, the Secretary may restrict the amount of funds used to purchase equipment.

(Authority: 20 U.S.C. 1221e)

PART 706—REGIONAL EDUCATIONAL LABORATORIES AND RESEARCH AND DEVELOPMENT CENTERS PROGRAM: GENERAL PROVISIONS

Subpart A—General

Sec.

706.1 What are the Regional Educational Laboratories and Research and Development Centers Programs?
706.2 Who is eligible for an award?
706.3 What priorities may the Secretary establish?
706.4 What regulations apply?
706.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

706.10 What assurances must an applicant make?
706.11 What information is needed for a multi-year project for institutional operations?

Sec.

Subpart C—How Does the Secretary Make an Award?

706.20 How does the Secretary evaluate an application?
706.21 What additional procedures may the Secretary use to determine which applications will be selected for funding?
706.22 What additional factors may the Secretary consider in selecting an application for a planning award?
706.23 What additional factors may the Secretary use to select an application for an institutional operations award?

AUTHORITY: 20 U.S.C. 1221e, unless otherwise noted.

SOURCE: 53 FR 30790, Aug. 15, 1988, unless otherwise noted.

Subpart A—General

§ 706.1 What are the Regional Educational Laboratories and Research and Development Centers Programs?

Under the Regional Laboratories and Research and Development Centers Programs, the Secretary provides support for planning, institutional operations, and special activities of regional educational laboratories and research and development centers.

(Authority: 20 U.S.C. 1221e)

§ 706.2 Who is eligible for an award?

(a) The following parties are eligible to apply for awards for the planning of a laboratory or center:

(1) Public or private organizations, institutions or agencies.

(2) Individuals.

(b) The following parties are eligible to apply for awards for institutional operations:

(1) For regional educational laboratories, public agencies or private nonprofit organizations.

(2) For research and development centers, institutions of higher education, institutions of higher education in consort with public agencies or private nonprofit organizations or interstate agencies established by compact that operate subsidiary bodies established to conduct postsecondary educational research and development.

(c) In any fiscal year, the Secretary may make grants for special activities to regional educational laboratories or research and development centers that receive institutional operations awards in the same fiscal year.

(Authority: 20 U.S.C. 1221e)

§ 706.3 What priorities may the Secretary establish?

(a) The Secretary may select funding priorities from a list of biennial research priorities published in the FEDERAL REGISTER for public comment pursuant to section 405(b)(4) of the Act, and published in final form in the FEDERAL REGISTER. These biennial research priorities may include one or more priorities from paragraph (b) of this section.

(b) The Secretary may also select one or more funding priorities by choosing from the following list of individual priorities or a combination of these priorities:

(1) Learning.

(2) Teaching.

(3) Technology in education.

(4) Instructional processes and materials, including textbooks and computer software for instruction.

(5) Education and staff development for teachers, administrators and other education staff.

(6) Organization and management of schools, including effective education leadership.

(7) Evaluation and indicator measures, including testing, measurement, and standards of performance.

(8) Governance of education, including school board policies and practices.

(9) Educational finance and productivity.

(10) Education and the law.

(11) Dissemination and knowledge utilization in education.

(12) Improvement in education, including State and local reform initiatives.

(13) Student achievement, including students' motivation to learn, their failure to learn, and their failure to attend school and graduate.

(14) Home, family, cultural, and community influences on education, including parental choice and involvement in schooling.

(15) Education, work, and careers.

(16) Equity and excellence, including the effects of ability grouping.

(17) Guidance and counseling.

(18) International education.

(19) English literacy, including reading, writing, and language skills.

(20) Mathematics.

(21) Science.

(22) Foreign languages.

(23) Early childhood education.

(24) History and social sciences, including economics, geography, political science, sociology, anthropology, and psychology.

(25) Physical and health education.

(26) Humanities, including music, art, literature and dance.

(27) Citizenship and character education.

(28) Elementary education.

(29) Secondary education.

(30) Early adolescent education.

(31) Adolescent education.

(32) Postsecondary education.

(33) Adult and continuing education.

(34) Teachers.

(35) School professionals and personnel.

(36) Public and private educational institutions.

(37) School discipline and crime in the schools.

(38) Education of special populations, including the educationally disadvantaged or students-at-risk, those with limited English proficiency, the handicapped, immigrants, and the academically gifted and talented.

(39) Implementation and effects of educational policies.

(Authority: 20 U.S.C. 1221e)

§ 706.4 What regulations apply?

(a) *Grants.* The following regulations apply to grants under this program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(2) The regulations in this Part 706 and in 34 CFR Parts 707 and 708.

(b) *Contracts.* (1) The following regulations apply to contracts under this program:

(i) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1.

(ii) The Education Department Acquisition Regulation (EDAR) in 48 CFR Chapter 34.

(2) Requirements substantially similar to the following sections of the regulations in this Part 706 and 34 CFR Parts 707 and 708 will be incorporated into the solicitation for a laboratory or center contract, to the extent that these sections are consistent with applicable regulations in the FAR and EDAR:

(i) *Part 706.* Sections 706.1, 706.5, 706.10, 706.11, 706.22 and 706.23.

(ii) *Part 707.* Sections 707.1, 707.2, 707.10, 707.11, 707.12, and 707.20.

(iii) *Part 708.* Sections 708.1, 708.10, 708.11, 708.12, and 708.20.

(Authority: 20 U.S.C. 1221e)

§ 706.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Grant
Nonprofit
Private
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to this part:

Act means the General Education Provisions Act, as amended.

Center means an educational research and development center authorized under section 405(d)(4)(A)(ii) of the Act.

Contract means a procurement contract entered into by the Federal government to purchase, rent, lease or otherwise obtain supplies or services from nonfederal sources.

Educational research means basic and applied research, development, planning, surveys, assessments, evaluations, investigations, experiments, and demonstrations in the field of education and related fields.

Institution of higher education means an institution of higher education as defined in section 1201 of the Higher Education Act of 1965, as amended.

Institutional operations means the activities of a laboratory or center conducted under a long-term plan approved by the Secretary.

Laboratory means a regional educational laboratory authorized under section 405(d)(4)(A)(i) of the Act.

Mission means the priority or priorities for a center established by the Department in accordance with § 706.3.

Planning means activities related to preparing an application for institutional operations of a laboratory or center.

Special activities means activities carried out by a Regional Educational Laboratory or a Research and Development Center in addition to those included in its institutional operations award.

(Authority: 20 U.S.C. 1141; 1221e)

Subpart B—How Does One Apply for an Award?

§ 706.10 What assurances must an applicant make?

In its application for an award for institutional operations, an applicant shall make assurances that the laboratory or center involved will—

(a) Be responsible for the conduct of the research and development activities in its approved application;

(b) Prepare a long-range plan relating to the conduct of those research and development activities;

(c) Ensure that information developed as a result of those research and development activities, including new educational methods, practices, techniques, and products, are appropriately disseminated;

(d) Provide technical assistance to appropriate educational agencies and institutions; and

(e) To the extent practicable, provide training for individuals, emphasizing training opportunities for women and members of minority groups, in the use of new educational methods, practices, techniques and products developed in connection with those activities.

(Authority: 20 U.S.C. 1221e)

§ 706.11 What information is needed for a multi-year project for institutional operations?

In addition to the information required in 34 CFR 75.117, an application for a multi-year project for institutional operations must contain a mission statement for the proposed center as a whole or a proposed long range plan for the proposed laboratory. The mission statement or proposed long range plan must describe goals and objectives for each year of the proposed project and discuss how they relate to the specific activities described in the application.

(Approved by the Office of Management and Budget under control number 1850-0602)

(Authority: 20 U.S.C. 1221e)

Subpart C—How Does the Secretary Make an Award?

§ 706.20 How does the Secretary evaluate an application?

(a) For each competition the Secretary uses the applicable selection criteria in 34 CFR 707.10, 707.11, 707.12, 708.10, 708.11 or 708.12 to evaluate applications for new awards under this program.

(b) The maximum score for all the criteria in each section is 100 points, including any reserved points to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For any competition for center awards, the Secretary assigns 10 additional points to one or more of the criteria described in the applicable section (34 CFR 708.10, 708.11, or 708.12).

(Authority: 20 U.S.C. 1221e)

§ 706.21 What additional procedures may the Secretary use to determine which applications will be selected for funding?

In addition to the review procedures in 34 CFR 75.217, the Secretary may use the following procedures to determine which applications will be selected for funding:

(a) After review of applications and preparation of a rank order of the applications in accordance with 34 CFR 75.217 (b) and (c) and § 706.20, the Secretary may select applications for further consideration on the basis of the rank order and the factors in 34 CFR 75.217(d). The Secretary informs each applicant whether its application has been chosen for further consideration.

(b) (1) Each applicant chosen for further consideration shall submit any additional information requested by the Secretary.

(2) In requesting additional information of applicants chosen for further consideration, the Secretary—

(i) Provides applicants with a reasonable opportunity to revise and resubmit their applications; and

(ii) Does not provide information to any applicant about the contents of other applications chosen for further consideration, or otherwise provide any information that could give an applicant a competitive advantage over other applicants.

(c) The Secretary may conduct site visits to all or some of the applicants to obtain further information on the activities described in an application and an applicant's capability to perform those activities.

(Authority: 20 U.S.C. 1221e)

§ 706.22 What additional factors may the Secretary consider in selecting an application for a planning award?

In addition to the selection criteria in 34 CFR 707.10 or 708.10 and the additional information in accordance with § 706.21, the Secretary considers the following in making awards for planning of a laboratory or center:

(a) The relationship between the technical merit of the proposed educational research and development program and its cost in comparison to other proposed programs.

(b) The extent to which funding an application would contribute to a collection of laboratory and center activities that are both diverse and balanced.

(Authority: 20 U.S.C. 1221e)

§ 706.23 What additional factors does the Secretary use to select an application for an institutional operations award?

In addition to the criteria in 34 CFR 707.11 and 708.11 and the additional information obtained in accordance with § 706.21, the Secretary considers the following in making awards for institutional operations of a laboratory or center:

(a) The extent to which funding an application would contribute to a collection of laboratory and center activities that are both diverse and balanced; and

(b) The relationship between the technical merit of the proposed program and its cost in comparison to other proposed programs.

(Authority: 20 U.S.C. 1221e)

PART 707—REGIONAL EDUCATIONAL LABORATORIES

Subpart A—General

Sec.
707.1 What regulations apply?
707.2 What geographic regions do the laboratories serve?

Subpart B—How Does the Secretary Make an Award?

707.10 What are the selection criteria for laboratory awards for planning?
707.11 What are the selection criteria for laboratory awards for institutional operations?
707.12 What are the selection criteria for laboratory awards for special activities?

Subpart C—What Conditions Must Be Met by a Grantee?

707.20 What requirements must be met by a grantee?

AUTHORITY: 20 U.S.C. 1221e, unless otherwise noted.

SOURCE: 53 FR 30792, Aug. 15, 1988, unless otherwise noted.

Subpart A—General

§ 707.1 What regulations apply?

The regulations in this part and the regulations cited in 34 CFR 706.4 apply to awards for regional educational laboratories.

(Authority: 20 U.S.C. 1221e)

[53 FR 30792, Aug. 15, 1988, as amended at 54 FR 3029, Jan. 23. 1989]

§ 707.2 What geographic regions do the laboratories serve?

(a) A laboratory established under this program serves one of the following geographic regions:

(1) Connecticut, Maine, Massachusetts, New Hampshire, New York, Puerto Rico, Rhode Island, Vermont, Virgin Islands.

(2) Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania.

(3) Kentucky, Tennessee, Virginia, West Virginia.

(4) Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina.

(5) Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, Wisconsin.

(6) Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

(7) Colorado, Kansas, Missouri, Nebraska, North Dakota, South Dakota, Wyoming.

(8) Arizona, California, Nevada, Utah.

(9) Alaska, Idaho, Montana, Oregon, Washington.

(10) American Samoa, Guam, Hawaii, the Northern Mariana Islands, Palau (to the extent authorized by Pub. L. 99-658 and until the effective date of the Compact of Free Association with the Government of Palau), and to the extent approved by the Secretary, the Marshall Islands and the Federated States of Micronesia (in accordance with section 226 of the compact of Free Association as set forth in section 201 of Pub. L. 99-239), and Palau (after the effective date of the compact of Free Association with the Government of Palau), in accordance with section 222 of that Compact as set forth in section 201 of Pub. L. 99-658.

(b) For each competition for a laboratory award, the Secretary announces which one or more of the geographic regions designated in § 707.2(a) will be served.

(c) In the event that funding of a particular laboratory serving a region under this program is discontinued, the Secretary may provide additional funds to another laboratory for continuation of laboratory services to States in that region.

(Authority: 20 U.S.C. 1221e)

[53 FR 30792, Aug. 15, 1988, as amended at 54 FR 3029, Jan. 23. 1989]

Subpart B—How Does the Secretary Make an Award?

§ 707.10 What are the selection criteria for laboratory awards for planning?

The Secretary uses the following criteria to evaluate applications for laboratory awards for planning:

(a) *Understanding of the educational settings and issues in the region* (25 points). The Secretary reviews each application to determine the extent to which the applicant—

(1) Understands the educational settings and issues in the region;

(2) Demonstrates knowledge of the strengths and needs of the educational systems—public and private, elementary, secondary, and postsecondary—in the region;

(3) Understands significant trends expected to influence education in the region over the next five years;

(4) Demonstrates knowledge of the capabilities of existing organizations that provide research, dissemination, training, and assistance to educational agencies in the region and how a laboratory can complement their work; and

(5) Understands the barriers and challenges facing a laboratory in the region and ways of overcoming them.

(b) *Organizational ability to conduct planning and design tasks* (20 points). The Secretary reviews each application to determine the organizational ability of the applicant to conduct the required planning and design tasks, including—

(1) The extent to which the applicant has successful experience in planning or conducting multi-State activities related to educational research and development; and

(2) Whether the existing relationships in the region give the applicant access to important groups of clients in the region and contribute to cooperative planning activities.

(c) *Plan of operation* (20 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the management plan ensures proper and efficient administration of the project;

(3) The degree to which the objectives of the project relate to the purpose of the program; and

(4) The adequacy of the applicant's plans to use its resources and personnel to achieve each objective.

(d) *Quality of key personnel* (20 points). (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives and activities of the project.

(f) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources to be devoted to the project, including facilities, equipment and supplies.

(Approved by the Office of Management and Budget under control number 1850-0602)

(Authority: 20 U.S.C. 1221e)

§ 707.11 What are the selection criteria for laboratory awards for institutional operations?

The Secretary uses the following criteria to evaluate applications for laboratory awards for institutional operations:

(a) *Understanding of and responsiveness to regional needs* (10 points). The Secretary reviews each application to determine the applicant's understanding of and responsiveness to the needs of the region, including—

(1) The degree to which the applicant demonstrates an understanding of current and projected educational conditions and needs in the region;

(2) The extent to which the applicant proposes adequate mechanisms and procedures for assessing the educational research and development needs and capabilities of the region and for determining laboratory priorities; and

(3) The quality of the applicant's analysis of strategic options and a plan for responding to regional needs.

(b) *Strength of relationships with the region* (15 points). The Secretary reviews each application to determine the strength of the applicant's relationship with the region to be served, including—

(1) The extent to which the proposed governing board's membership reflects regional interests and constituencies;

(i) The quality of the applicant's plans for a governing board designed to take an active role in setting policy and determining the regional agenda of the laboratory;

(ii) The extent to which the applicant's plans for a governance structure provide the organizational autonomy necessary for neutrality, balance, and equity in the selection of clients and the delivery of services;

(2) The quality, extent, and feasibility of proposed collaborative relationships with appropriate organizations, such as—

(i) Public education agencies at State, intermediate, and local levels;

(ii) Educational research and development agencies;

(iii) Organizations providing assistance in the use of research outcomes;

(iv) Clearinghouses, including those compromising the Education Resources Information Clearinghouse system;

(v) Professional associations;

(vi) Institutions of higher education;

(vii) Community-based organizations;

(viii) Business and industry; and

(ix) National Diffusion Network: State and Private School Facilitators; and

(3) Evidence of successful work in the past with organizations listed in paragraph (b)(2) of this section.

(c) *Institutional capability* (15 points). The Secretary reviews each application to determine the qualifications of the applicant to sustain a long-term, high-quality, and coherent program of research and services, including—

(1) The extent to which adequate organizational mechanisms and procedures exist for managing work internally and in collaboration with other institutions;

(2) The degree to which there are adequate procedures for quality control and self-evaluation; and

(3) The degree to which there are adequate plans for effecting improvement in organizational performance and staff development during the project period.

(d) *Plan of operation* (25 points). The Secretary reviews each application to determine the quality of the plan of operation for the project; including—

(1) Quality in the design of the project;

(2) The degree to which the management plan ensures proper and efficient administration of the project;

(3) The degree to which the objectives of the project relate to the mission of the laboratory;

(4) The adequacy of the applicant's plans to use its resources and personnel to achieve each objective;

(5) The quality of the applicant's plan to provide equitable services to students and teachers in elementary and secondary public and private schools;

(6) The extent to which proposed activities relate logically to statements of regional needs and priorities;

(7) The degree of coherence of work within and among program activities;

(8) The extent to which the proposed activities complement related efforts inside and outside the region;

(9) The extent of the anticipated contribution of the work to educational improvement; and

(10) The appropriateness of provisions for sequencing and pacing work activities.

(e) *Quality of key personnel* (20 points). (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (e)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(f) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the adequacy of the budget and cost effectiveness, including the extent to which—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the adequacy of—

(1) A peer review process for evaluating laboratory products, research instruments, and self-evaluation designs;

(2) The participation of the governing board in setting requirements and examining results of laboratory self-evaluation of activities and outcomes;

(3) The methods which document the laboratory's progress in relation to its objectives; and

(4) The methods which document the impact of the laboratory's program on the needs of those served in the designated region.

(h) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

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(Authority: 20 U.S.C. 1221e)

§ 707.12 What are the selection criteria for laboratory awards for special activities?

The Secretary uses the following criteria to evaluate applications for laboratory awards for special projects:

(a) *Strength of relationships with appropriate organizations and agencies in the region* (15 points). The Secretary reviews each application to determine the quality, extent and feasibility of proposed collaborative relationships of the laboratory with organizations listed in § 707.11(b)(2) to the focus and purpose of the special activity.

(b) *Institutional capability* (15 points). The Secretary reviews each application to determine the adequacy of the laboratory's organizational capacity for implementing the special activity.

(c) *Plan of operation* (30 points). The Secretary reviews each application to determine the quality of the plan for implementing the special activity.

(d) *Quality of key personnel* (25 points). The Secretary reviews each application to determine the qualifications of the key personnel, including experience and training related to the objectives of the activity.

(e) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the adequacy and cost effectiveness of the budget for the special activity.

(f) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan to document accomplishment of the activity's objectives.

(g) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the activity, including facilities, equipment, and supplies.

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(Authority: 20 U.S.C. 1221e)

Subpart C—What Conditions Must Be Met by a Grantee?

§ 707.20 What requirements must be met by a grantee?

An applicant receiving a laboratory award for institutional operations shall meet the following post-award requirements:

(a) Establish a governing board that—

(1) Is the sole entity that—

(i) Guides and directs the laboratory in satisfying the terms and conditions of the award; and

(ii) Determines the regional agenda of the laboratory, consistent with the priority research and development needs established by the Secretary; and

(2) Reflects a balanced representation of the States in the region, as well as the interests and concerns of regional constituencies.

(b) Facilitate communication among educational agencies and individuals in the region.

(c) Identify concerns and priorities through regionally representative governing and advisory structures and activities that help regional clients define their needs.

(d) Conduct applied research, development, and related activities to address regional needs.

(e) Promote the use in the region of research and development results from all sources inside and outside the region, including the laboratory.

(f) Collaborate with centers, other laboratories, the Education Resources Information Clearinghouses, and the National Diffusion Network: State and Private School Facilitators.

(g) Establish a peer review process for evaluating laboratory products, research instruments, and self-evaluation designs.

(Authority: 20 U.S.C. 1221e)

PART 708—RESEARCH AND DEVELOPMENT CENTERS

Subpart A—General

Sec.

708.1 What regulations apply?

Subpart B—How Does the Secretary Make an Award?

708.10 What are the selection criteria for awards for center planning?
708.11 What are the selection criteria for center awards for institutional operations?
708.12 What are the selection criteria for center awards for special activities?

Subparts C-D [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

708.20 What requirements must be met by a grantee?
708.21 What additional factors does the Secretary consider in making continuation awards?

Authority: 20 U.S.C. 1221e, unless otherwise noted.

Source: 53 FR 30795, Aug. 15, 1988, unless othewise noted.

Subpart A—General

§ 708.1 What regulations apply?

The regulations in this part and the regulations cited in 34 CFR 706.4 apply to awards for research and development centers.

(Authority: 20 U.S.C. 1221e)

Subpart B—How Does the Secretary Make an Award?

§ 708.10 What are the selection criteria for awards for center planning?

The Secretary uses the following criteria to evaluate applications for awards for center planning:

(a) *Mission and strategy* (40 points). The Secretary reviews each application to determine the extent to which the applicant understands the state of knowledge and practice with respect to the problem area and priorities of the center for which the applicant is applying, including the extent to which the applicant shows—

(1) An understanding of the mission of the proposed center;

(2) Knowledge of relevant research and theory;

(3) Knowledge of relevant problems in educational practice;

(4) Familiarity with relevant strategies of research, development, and dissemination; and

(5) Familiarity with strategies for relating to other organizations in educational research, development, and practice.

(b) *Potential to influence practice or policy* (20 points). The Secretary reviews each application to determine if the planning process will address strategies for influencing educational practice or policy, including—

(1) The extent to which the project will address practitioners' or policymaker's needs as identified; and

(2) The extent to which the planning process will result in a design that will yield knowledge that can be used in an educational or policymaking setting.

(c) *Plan of operation* (*10 points*). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality in the design of the project;

(2) The effectiveness of the management plan; and

(3) The degree to which the research needs of both public and private elementary and secondary schools or institutions of higher education will be addressed.

(d) *Quality of key personnel* (20 points). (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the center's key personnel to be involved in the center's planning;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications, under paragraphs (d)(1) (i) and (ii) of this section the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

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(Authority: 20 U.S.C. 1221e)

§ 708.11 What are the selection criteria for center awards for institutional operations?

The Secretary uses the following criteria to evaluate applications for center awards for institutional operations:

(a) *Mission and strategy* (15 points). The Secretary reviews each application to determine the extent to which the applicant understands the state of knowledge and practice related to the priorities established by the Secretary for the center's mission, including—

(1) The extent of the applicant's understanding of the mission of the proposed center;

(2) How the activities of the proposed center will contribute to the advancement of relevant theory and practice;

(3) The quality of plans to establish effective working relations with other organizations in educational research, development, and practice;

(4) The quality of the plans to address the problems of special populations and of both public and private institutions in terms of the mission of the proposed center; and

(5) The quality of long-range plans for developing an appropriate, coherent, and effective program of educational research, development, and dissemination.

(b) *Institutional capability* (15 points). The Secretary reviews each application to determine the capabilities of the host institution to sustain a long-term, high-quality, and coherent program of research, development, and dissemination, in the mission area, including the extent to which the application shows evidence of—

(1) An appropriate organizational structure and commitment to provide the services of appropriate faculty or staff members from the applicant's organization;

(2) An appropriate mixture of scholarly and practitioner backgrounds in the project staff of the applicant;

(3) Past successes of the applicant in collaborating with individuals and organizations to conduct educational research and development;

(4) Structure and governance arrangements likely to provide appropriate direction, quality control, and cost effective management; and

(5) Availability of appropriate resources for the effective implementation of research and development activities.

(c) *Plan of operation* (15 points). The Secretary reviews each application to determine the quality of the plan of operation for the proposed center, including—

(1) The degree to which the plan for center management ensures proper and efficient administration of the project;

(2) The effectiveness of proposed strategies for providing national leadership within the center's mission;

(3) The extent to which the applicant proposes strategies for disseminating center products, including the identification of intended audiences and reasonable timelines for dissemination; and

(4) The adequacy of the applicant's plans to use its resources and personnel to achieve each objective.

(d) *Technical soundness* (20 points). The Secretary reviews each application to determine the technical soundness of the proposed research, including—

(1) The extent to which the applicant demonstrates a thorough knowledge of current research and development concepts, theories, and outcomes and relates these to the proposed activities and the mission of the center;

(2) The adequacy of the research design and methodologies to address the research questions posed; and

(3) Evidence that, where appropriate, the perspectives of a variety of disciplines are used.

(e) *Quality of key personnel* (15 points). (1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The applicant's policy, as part of its nondiscriminatory employment practices, to ensure that its personnel are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (e)(1) (i) and (ii) of this section the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(f) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective, including the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) The equipment and supplies that the applicant plans to use are adequate; and

(3) Costs are reasonable in relation to the objectives and activities of the project.

(g) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the adequacy of—

(1) The peer review process for evaluating research instruments and products;

(2) The plan for advisory board evaluation of center research activities and resources;

(3) The methods which will be used to document the center's progress in relation to its objectives; and

(4) The methods which will be used to document the impact of the center's program on its target audiences.

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(Authority: 20 U.S.C. 1221e)

§ 708.12 What are the selection criteria for center awards for special activities?

The Secretary uses the following criteria to evaluate applications for awards for special activities:

(a) *Mission and strategy* (15 points). The Secretary reviews each application to determine the extent to which the special activity contributes to the current mission of the center, including the extent to which—

(1) The program of work will contribute to the advancement of relevant theory and practice;

(2) The plans to establish working relations, as appropriate, with other organizations in educational research, development, and practice will be effective;

(3) The proposed activities will advance the center's mission; and

(4) The proposed activities incorporate plans to address the problems of special populations and of both public and private elementary and secondary schools and institutions of higher education in terms of the mission of the proposed center.

(b) *Capacity of center* (10 points). The Secretary reviews each application to determine whether the institution has the appropriate organization and fiscal resources to complete the special activity, including—

(1) Strong evidence of an effective organizational structure and a commitment to provide the services of appropriate faculty or staff members from the applicant's organization;

(2) Inclusion of an appropriate mixture of scholarly and practitioner backgrounds in the project staff of the applicant;

(3) Structure and governance arrangements likely to provide appropriate direction, quality control, and cost effective management; and

(4) Adequate allotment of resources and facilities.

(c) *Plan of operation* (20 points). The Secretary reviews each application to determine the adequacy of the plan of operation for the activities and how they complement the center's current plans, including—

(1) The extent to which an effective plan of project management ensures proper and efficient administration of the activities:

(2) The extent to which the applicant plans to use its resources and personnel to achieve each objective; and

(3) The degree to which the research needs of both public and private elementary and secondary schools and institutions of higher education are addressed by the proposed research, if appropriate.

(d) *Technical soundness* (25 points). The Secretary reviews each application to determine the technical soundness of the proposed activities, including—

(1) The extent to which the application demonstrates a thorough knowledge of current research and development concepts, theories, and outcomes and relates this knowledge to the proposed activity and the mission of the center;

(2) The adequacy, as appropriate, of the research design and methodologies to address the research questions posed; and

(3) The extent to which, where appropriate, the perspectives of a variety of disciplines are used.

(e) *Quality of key personnel* (15 points). The Secretary reviews each application to determine the qualifications of the key personnel assigned to the special activities project, including the adequacy of—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project; and

(3) The applicant's policy, as part of its nondiscriminatory employment practices will ensure that its personnel are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) To determine personnel qualifications under paragraphs (e) (1) and (2) of this section, the Secretary considers—

(i) Experiences and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(f) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the appropriateness of the budget in relation to the proposed activities, including the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) The facilities' equipment and supplies that the applicant plans to use are adequate; and

(3) Costs are reasonable in relation to the objectives and activities of the project.

(Approved by the Office of Management and Budget under control number 1850-0602)

(Authority: 20 U.S.C. 1221e)

Subparts C–D [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 708.20 What requirements must be met by a grantee?

A grantee receiving an award for institutional operations shall—

(a) Provide national research leadership with respect to the mission of its center;

(b) Establish and maintain a nationally representative advisory panel; and

(c) Collaborate with laboratories, other centers, appropriate Education Resources Information Clearinghouses, and National Diffusion Network: State and Private School Facilitators.

(Authority: 20 U.S.C. 1221e)

§ 708.21 What additional factors does the Secretary consider in making continuation awards?

In making continuation awards under 34 CFR 75.253, the Secretary considers, among other factors, whether—

(a) All products and reports that were due during the budget period that is about to end have been received by the Department;

(b) The project's activities have been carried out in a manner consistent with the previously approved application;

(c) The products and reports are of adequate technical quality; and

(d) The project plans for the subsequent budget period are likely to advance the mission of the center, including the extent to which—

(1) The potential of any new or redirected research project or other center activity within the scope of the project plan will advance the mission of the center;

(2) The center's plan of operation for managing these activities is adequate;

(3) Any new research projects or other activities are technically sound;

(4) The center's personnel are qualified to accomplish the proposed activities; and

(5) The budget is appropriate in relation to the scope of the proposed activities.

(Authority: 20 U.S.C. 1221e)

PART 750—EXCELLENCE IN EDUCATION PROGRAM

Subpart A—General

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750.2 What parties are eligible for a grant under the Excellence in Education Program?
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Subpart B—What Types of Projects Does the Secretary Assist Under This Progam?

750.10 What types of grants does the Secretary award under this program?
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Subpart C—How Does One Apply for a Grant?

750.20 How does a local educational agency apply for a grant under this program?
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Subpart E—What Conditions Must be Met by the Grantee?

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Authority: Excellence in Education Act (the EEA), Title VI of the Education for Economic Security Act (the EESA), Pub. L.

98-377, 98 Stat. 1267 (20 U.S.C. 4031 *et seq.*), unless otherwise noted.

Source: 50 FR 25964, June 24, 1985, unless otherwise noted.

Subpart A—General

§ 750.1 What is the Excellence in Education Program?

The Excellence in Education Program assists local educational agencies to carry out, in individual public schools of those agencies, projects designed to achieve excellence in elementary and secondary education that—

(a) Demonstrate successful techniques for improving the quality of education;

(b) Can be disseminated and replicated; and

(c) Are conducted with the participation of school principals, school teachers, parents, and business concerns in the locality.

(Authority: 20 U.S.C. 4031)

§ 750.2 What parties are eligible for a grant under the Excellence in Education Program?

(a) Subject to the limitation in paragraph (b) of this section, a local educational agency is eligible to receive a grant under the exellence in Education Program if a specific school or schools of that local educational agency have been nominated in accordance with § 750.21.

(b) A local educational agency may not receive more than one grant under this program for each individual school of the local educational agency.

(Authority: 20 U.S.C. 4033, 4034, and 4035)

§ 750.3 What regulations apply to this program?

(a) The following regulations apply to grants under the Excellence in Education Program:

(1) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs).

(2) The regulations in this Part 750.

(b) The regulations in this Part 750 do not apply to contracts awarded under the Excellence in Education Program.

(Authority: 20 U.S.C. 4033)

§ 750.4 What definitions apply to this program?

(a) *Definitions in the Education for Economic Security Act.* The following terms used in this part are defined in sections 3 and 603 of the Education for Economic Security Act:

Elementary school
Local educational agency
Secondary school
Secretary
State
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal year
Grant
Grant period
Project
Public

(c) *Additional definitions.* The following terms are used in this part:

Chief educational officer means the chief officer for elementary and secondary education of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Chief State school officer means the chief officer for elementary and secondary education of each State other than the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

EEA means the Excellence in Education Act, Title VI of Public Law 98-377.

EESA means the Education for Economic Security Act, Public Law 98-377.

(Authority: 20 U.S.C. 3902, 4032)

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

§ 750.10 What types of grants does the Secretary award under the program?

The Secretary awards two types of grants under this program:

(a) *Schools excellence grants.* The Secretary awards school excellence grants to carry out the purposes of this program described in § 750.1.

(b) *Special school grants.* The Secretary awards special school grants to encourage contributions of funds from the private sector to carry out further the purposes of this program.

(Authority: 20 U.S.C. 4034, 4036)

§ 750.11 How does the Secretary establish priorities for this program?

(a) The Secretary gives priority to applications proposing projects that have the highest potential for successfully demonstrating techniques to improve the quality of education and that can be disseminated and replicated.

(b) The Secretary also gives priority to applications that have as their purposes one or more (or combinations) of the following—

(1) Modernization and improvement of secondary school curricula to improve student achievement in academic or vocational subjects, or both, and competency in basic functional skills;

(2) Elimination of excessive electives and the establishment of increased graduation requirements in basic subjects;

(3) Improvement in student attendance and discipline through the demonstration of innovative student motivation techniques and attendance policies with clear sanctions to reduce student absenteeism and tardiness;

(4) Demonstrations to increase learning time for students;

(5) Experimentation providing incentives to teachers and teams of teachers for outstanding performance, includint financial rewards, administrative relief such as the removal of paperwork and extra duties, and professional development;

(6) Demonstrations to increase student motivation and achievement through creative combinations of independent study, team teaching, laboratory experience, technology utilization, and improved career guidance and counseling; or

(7) Demonstrations of new and promising models of school-community and school-to-school relationships including the use of nonschool personnel to alleviate shortages in areas such as mathematics, science, and foreign language instruction, as well as other partnerships between business and education, including the use of equipment.

(c) In addition to establishing priorities for this program pursuant to paragraphs (a) and (b) of this section, the Secretary may also give priority to other types of projects as announced in the FEDERAL REGISTER.

(d) The Secretary may establish a separate competition for any or each priority selected. If a separate competition is established for a priority, the Secretary may reserve all applications that relate to the priority for review under the separate competition.

NOTE: EDGAR establishes the method for applying priorities. See 34 CFR 75.105.

(Authority: 20 U.S.C. 4034)

Subpart C—How Does One Apply for a Grant?

§ 750.20 How does a local educational agency apply for a grant under this program?

(a) A local educational agency shall submit to the chief State school officer (or chief educational officer) of the State in which the local educational agency is located a separate application for each school with respect to which the local educational agency is applying for a grant. In any fiscal year in which the Secretary establishes separate grant competitions within this program, a local educational agency may apply for more than one grant for an individual school by submitting separate applications to each or any of the grant competitions. Pursuant to

§ 750.2(b), a local educational agency may receive only one grant under this program for each individual school.

(b) In addition to the information required in EDGAR, 34 CFR 75.107, the local educational agency must include in its application the following information:

(1) The type of grant under § 750.10 for which the local educational agency is applying.

(2) The name and location of the school.

(3) School size in terms of the number of students enrolled and the number of teachers teaching in the school.

(4) The size, socioeconomic conditions, location of the community in which the school is located, and the local governmental arrangements between the government and the local educational agency submitting the application.

(5) A description of the activities, including information designed to meet the selection criteria listed in § 750.31, that will be conducted in the school nominated.

(6) Assurances that—

(i) The school nominated for a grant will carry out the activities proposed in the application; and

(ii) If a school is nominated for a special school grant as described in § 750.10(b), it will receive contributions of funds from the private sector to help carry out the activities proposed in the application.

(7) An assessment of the potential for the proposed project to successfully demonstrate techniques for improving the quality of education that can be disseminated and replicated.

(Approved by the Office of Management and Budget under control number 1880-0510)

(Authority: 20 U.S.C. 4034)

§ 750.21 How does a State educational agency nominate a school for a grant under this program?

(a) In each fiscal year, the chief State school officer of each State may select for nomination to the Secretary up to twenty-five applications from those submitted in accordance with § 750.20(a). In the case of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the chief educational officer may select up to five applications.

(b) In selecting schools to nominate under this section, the chief State school officer or chief educational officer shall assure a fair and equitable distribution of schools within the State after considering—

(1) All categories of public elementary and secondary schools within the State, including, but not limited to, elementary schools, junior high schools, secondary schools, vocational-technical schools, or any combination of two or more schools;

(2) Socioeconomic conditions of the State;

(3) Geographic distribution within the State;

(4) School size;

(5) The size and location of the community in which the school is located;

(6) The local governmental arrangements between the government and the local educational agency submitting the application;

(7) The potential for the proposed project to demonstrate successfully techniques for improving the quality of education in ways that can be disseminated and replicated; and

(8) Other relevant information provided by the local educational agency in its application, including information that addresses each selection criterion in § 750.31.

(c) In order to nominate individual schools in local educational agencies for grants under this program, each chief State school officer or chief educational officer shall send to the Secretary the following information regarding each individual school to be nominated to the Secretary:

(1) The application submitted by the local educational agency that nominated the school.

(2) Any additional information considered under paragraph (b) of this section that is not included in the application and that is needed to enable the Secretary to make a determination under § 750.32.

(3) Any additional information that the chief State school officer (or chief

educational officer) and local educational agency consider appropriate.

(Approved by the Office of Management and Budget under control number 1880-0510)

(Authority: 20 U.S.C. 4034)

Subpart D—How Does the Secretary Make a Grant?

§ 750.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the criteria in § 750.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 750.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the FEDERAL REGISTER, the Secretary distributes the reserved 15 points among the criteria in § 750.31.

(Authority: 20 U.S.C. 4034)

§ 750.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (20 Points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the school's need and to the purposes of this program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly;

(vi) The quality of the work plan as evidenced by the specification and schedule of well-planned, creative, and innovative activities designed to achieve the project objectives in a successful manner; and

(vii) The participation of school principals, school-teachers, parents, and business concerns in the locality.

(b) *Quality of key personnel.* (15 Points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel that the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 Points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows the methods of assessing and reporting the outcomes of the project are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(3) The Secretary looks for information that shows reporting methods that enhance the potential for disseminating and replicating the project.

(e) *Adequacy of resources.* (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Improving elementary or secondary education.* (15 Points)

(1) The Secretary reviews each application for information that shows the extent to which the project contributes to the improvement of the quality of elementary or secondary education in the applicant's school through activities designed to implement recommendations from the Report of the National Commission on Excellence in Education, other national reports on the status of American education, or current research findings on approaches to making schooling more effective.

(2) The Secretary looks for information such as—

(i) The extent to which the project's objectives apply to the school's particular circumstances and needs, current recommendations and findings concerning ways to improve the quality of education;

(ii) The process by which the applicant identified its needs;

(iii) The manner in which those objectives form the basis of the activities designed to demonstrate successful techniques improving the quality of education in the applicant's school;

(iv) The extent to which the project provides potential to experiment with standards of quality; and

(v) The benefit to the applicant from meeting the project's objectives.

(g) *National significance.* (15 Points)

(1) The Secretary reviews each application for information that shows the national significance of the project.

(2) The Secretary looks for information that shows the extent to which the project makes a contribution of national significance, as measured by factors such as—

(i) A demonstrated national need for the project in terms of the recommendations to improve the quality of education in the Report of the National Commission on Excellence in Education, other national reports on the status of American schools, or current research findings on ways to improve the effectiveness of schools;

(ii) The extent to which the project meets specific national needs as shown by—

(A) The national needs addressed by the project;

(B) The potential benefit to other schools in the Nation from successfully addressing the needs;

(C) The extent to which the project involves creative or innovative techniques to improve educational quality in the school;

(D) The extent to which the project builds upon and adds to current educational information or research; and

(E) The extent to which the project is designed to yield outcomes that can be readily disseminated and replicated in other school settings, such as products, materials, processes or techniques.

(h) *Applicant's commitment and capacity.* (5 Points) The Secretary looks for information that shows the extent of the applicant's commitment to the project, its efforts to generate community support for the project, and the likelihood that it will build on the project when Federal assistance ends.

(Approved by the Office of Management and Budget under control number 1880-0510)

(Authority: 20 U.S.C. 4031, 4034)

§ 750.32 How does the Secretary consider fair and equitable distribution of projects?

(a) After evaluating the applications according to the criteria contained in § 750.31 of these regulations, the Secretary determines whether the most highly rated applications are fairly and equitably distributed throughout the Nation and throughout each State. In determining whether the most highly rated applications are fairly and equitably distributed, the Secretary considers—

(1) All categories of public elementary and secondary schools within each State and within the Nation, including, but not limited to, elementary schools, junior high schools, secondary schools, vocational-technical schools, or any combination of two or more schools;

(2) Socioeconomic conditions within the State and the Nation;

(3) Geographical distribution within the State and the Nation;

(4) School size;

(5) The size and location of the community in which the school is located;

(6) The local governmental arrangements between the government and the local educational agency submitting the application; and

(7) The potential for the proposed project to demonstrate successfully techniques for improving the quality of education that can be disseminated and replicated.

(b) The Secretary selects not more than 500 schools from the nominations submitted by the chief State school officers and chief educational officers after an impartial review panel has considered each submission.

(c) The Secretary may select other applications for funding if doing so would improve the distribution of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 4034)

§ 750.33 What funding limitations apply to grants under this program?

(a) The amount of a grant awarded to a local educational agency for an individual school must be based on the size of the school, the number of students enrolled in the school, and the number of teachers teaching in the school.

(b) With respect to school excellence grants, the amount of the grant may not exceed the following:

(1) For schools with a size of fewer than 1000 students and teachers combined, $15,000 for a one-year project and $30,000 for a two-year project.

(2) For schools with a size of 1000 or more students and teachers combined, $20,000 for a one-year project and $35,000 for a two-year project.

(c) With respect to special school grants, the amount of the grant may not exceed the following:

(1) For schools with a size of fewer than 1000 students and teachers combined, $20,000 for a one-year project and $35,000 for a two-year project.

(2) For school with a size of 1000 or more students and teachers combined, $25,000 for a one-year project and $40,000 for a two-year project.

(d) A grant under this program may not be made for a project period longer than two years.

(Authority: 20 U.S.C. 4035, 4036)

Subpart E—What Conditions Must Be Met by the Grantee?

§ 750.40 Is cost sharing required for grants under this program?

(a) The Secretary requires cost sharing only for grantees that receive special school grants.

(b) The Federal share for each year of the grant may not be less than 67⅔ percent nor more than 90 percent of the total cost of the project for which a special school grant is awarded.

(c) The Secretary announces, in a notice published in the FEDERAL REGISTER, the Federal share for each competition established for special school grants. The Secretary bases the Federal share for each competition on the following criteria:

(1) If the Secretary has selected a priority for the competition, the extent to which contributions of funds from the private sector will enhance the implementation of projects under that priority; and

(2) The amount of funds appropriated (or likely to be appropriated) for this program in a particular year.

NOTE: EDGAR establishes the rules governing cost sharing. See 34 CFR 74.50 through 74.57.

(Authority: 20 U.S.C. 4036)

§ 750.41 Are there restrictions on the use of funds for equipment under this program?

Of the funds made available through a grant under this program, the Secretary may restrict the amount of funds used to purchase equipment.

(Authority: 20 U.S.C. 4034)

PART 755—NATIONAL PROGRAM FOR MATHEMATICS AND SCIENCE EDUCATION

Subpart A—General

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AUTHORITY: 20 U.S.C. 2992, unless otherwise noted.

SOURCE: 54 FR 32946, Aug. 10, 1989, unless otherwise noted.

SUBPART A—GENERAL

§ 755.1 What is the National Program for Mathematics and Science Education?

The National Program for Mathematics and Science Education assists projects of national significance in elementary and secondary school mathematics and science instruction designed to improve the skills of teachers and instruction in these areas and to increase the access of all students to that instruction.

(Authority: 20 U.S.C. 2992)

§ 755.2 What parties are eligible for a grant under this program?

The Secretary may award grants to State educational agencies, local educational agencies, institutions of higher education, and public and private nonprofit organizations, including museums, libraries, educational television producers, distributors, and stations, and professional science, mathematics, and engineering societies and associations.

(Authority: 20 U.S.C. 2992)

§ 755.3 What regulations apply to this program?

The following regulations apply to grants made under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions That Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs, and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), and part 85 (Governmentwide Debarment and Suspension (Nonprocurement), Governmentwide Requirements for Drug-Free Workplace (Grants); and

(b) The regulations in this part 755.

(Authority: 20 U.S.C. 2992)

§ 755.4 What definitions apply to this program?

(a) *Definitions in the act.* The following terms used in this part are defined in section 2013 of the Act:

Institution of higher education
State agency for higher education

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Department
Elementary School
EDGAR
Facilities
Fiscal Year
Grant
Local educational agency
Nonprofit
Private
Project
Public
Secondary school
Secretary
State
State educational agency

(c) *Additional definitions.* The following terms are used in this part:

Act means the Dwight D. Eisenhower Mathematics and Science Education Act, Title II, part A of the Elementary and Secondary Education Act of 1965, as amended.

Gifted and talented student means a student, identified by various measures, who demonstrates actual or potential high performance capability, particularly in the fields of mathematics and science.

Historically underserved and underrepresented populations includes females, minorities, handicapped persons, persons of limited-English proficiency, economically disadvantaged persons, and migrants.

Magnet school means a school or education center that offers a special curriculum and to which students are not automatically assigned but may seek to attend on a voluntary basis because of the special curriculum, including but not limited to a school or education center capable of attracting substantial numbers of students of different racial backgrounds.

Unsolicited application means an application, not specifically invited by the Secretary, that supports one or more of the activities listed in §755.11.

(Authority: 20 U.S.C. 2992, 2993)

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

§755.11 What types of projects does the Secretary assist?

(a) The Secretary funds applications proposing projects of national significance in mathematics and science instruction.

(b) Projects of national significance in mathematics and science instruction include those designed to—

(1) Improve teacher recruitment and retention in the fields of mathematics and science;

(2) Improve teacher qualifications and skills in the fields of mathematics and science; and

(3) Improve curricula in mathematics and science, including the use of new technologies.

(c) The Secretary does not provide operating revenue to meet local needs to any applicant under this program.

(Authority: 20 U.S.C. 2992)

§ 755.12 How does the Secretary establish priorities for this program?

(a) The Secretary may establish the following priorities:

(1) Establishing or improving magnet schools.

(2) Providing special services to historically underserved and underrepresented populations, especially gifted and talented children from these populations.

(3) Building upon and adding to a project that is already developed and disseminated.

(4) Training and retraining teachers in methods of scientific inquiry.

(5) Providing materials that aid the education of students.

(b) In addition to the priorities established in paragraph (a) of this section, each year the Secretary may select as a priority one or more of the types of projects listed in §755.11.

(c) The Secretary may limit any priority to mathematics or science, particular educational levels, or any combination of these subject areas and educational levels.

(Authority: 20 U.S.C. 2992)

Subpart C—How Does One Apply for a Grant?

§755.20 What assurances must an applicant make?

(a) An applicant that is a State (including a State educational agency or a State agency for higher education) or a local educational agency shall comply with the provisions of section 2010 of the Act governing the equitable participation of private school children and teachers in the purposes and benefits of the Act.

(b) An applicant described in paragraph (a) of this section shall include an assurance in its application that, in accordance with section 2010 of the Act, it will provide for consultation with appropriate private school representatives and for the equitable participation of children and teachers in private elementary or secondary schools if the applicant proposes to use grant funds to provide benefits to children and teachers in public elementary or secondary schools, including the provision of services, materials, equipment, and inservice or teacher training and retraining.

NOTE: EDGAR establishes requirements for participation of private school children. See 34 CFR 75.650.

(Authority: 20 U.S.C. 2992)

Subpart D—How Does the Secretary Make a Grant?

§ 755.30 How does the Secretary evaluate applications?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the applicable selection criteria in §755.32.

(b) The Secretary awards up to 100 points, including a reserved 10 points to be distributed in accordance with paragraph (d) of this section, based on the applicable criteria in § 755.32.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion in § 755.32 is indicated in parentheses.

(d) For each competition, as announced through a notice published in the FEDERAL REGISTER, the Secretary distributes the reserved 10 points among the applicable criteria listed in § 755.32

(Authority: 20 U.S.C. 2992)

§ 755.31 How does the Secretary evaluate unsolicited applications?

(a)(1) At any time during a fiscal year, the Secretary may accept and consider for funding an unsolicited application for a project that does not meet a priority established in accordance with § 755.12 if the project—

(i) Furthers the purposes and objectives of the program as described in § 755.1; and

(ii) Satisfies all other requirements for funding under this program.

(2) In a fiscal year in which the Secretary does not establish absolute priorities, the Secretary does not consider unsolicited applications for funding.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the FEDERAL REGISTER.

(c) The Secretary may select unsolicited applications for funding in accordance with the procedures contained in § 755.30(a)-(c).

(d) The Secretary reviews and evaluates an unsolicited application on the basis of the selection criteria in § 755.32.

(e) The Secretary assigns the reserved 10 points under § 755.30(b) to the selection criterion at § 755.32(f) (National significance) so that the maximum number of possible points for this criterion is 30.

(Authority: 20 U.S.C. 2992)

§ 755.32 What are the selection criteria?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (15 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(4) For an applicant who makes an assurance under § 755.20 as to the equitable participation of children and teachers in private elementary or secondary schools, how the applicant will ensure that equitable participation.

(b) *Quality of key personnel.* (5 Points) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(2) To determine personnel qualifications under paragraphs (b)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(c) *Budget and cost-effectiveness.* (5 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Are objective; and

(3) Document and quantify the project's effectiveness in achieving its stated goals.

CROSS-REFERENCE. See 34 CFR 75.590 Evalutation by the grantee.

(e) *Improvement of the quality of teaching and instruction in mathematics and science.* (25 Points) The Secretary reviews each application to determine the extent to which the project will contribute to the improvement of teaching and instruction in mathematics and science, including—

(1) The objectives of the project; and

(2) The manner in which the objectives of the project further the purposes of improving the quality of teaching and instruction in mathematics and science.

(f) *National significance.* (20 Points) The Secretary reviews each application to determine the national significance of the project, including—

(1) The magnitude of the need for the proposed project;

(2) The likely impact of the proposed project, and

(3) The potential transferability of the proposed project to other settings with the likelihood of accomplishing similar results.

(g) *Applicant's commitment and capacity.* (10 Points) The Secretary considers the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Approved by the Office of Management and Budget under control number 1850-0642)

(Authority: 20 U.S.C. 2992)

[54 FR 32946, August 10, 1989, as amended at 55 FR 1585, Jan. 17, 1990]

§ 755.33 What special considerations may the Secretary use in selecting an application for funding?

(a) After evaluating applications according to the criteria contained in § 755.32, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition or under this program.

(b) The Secretary may select other applications for funding if doing so would improve—

(1) The geographical distribution of projects funded under a particular competition or under this program, or

(2) The diversity of activities or projects funded under a particular competition or under this program.

(c) The Secretary may decline to fund a project that is eligible for funding by the Secretary under a different, specific Department of Education competition or program.

(d) The Secretary does not fund a project that receives Federal funds from other programs authorized under the Act.

(Authority: 20 U.S.C. 2992)

§ 755.34 Are there restrictions on the use of funds for equipment under this program?

Of the funds made available through a grant under this program, the Secretary may restrict the amount of funds used under this part to purchase equipment.

(Authority: 20 U.S.C. 2992)

PART 757—FIRST: SCHOOLS AND TEACHERS PROGRAM

Subpart A—General

Sec.

757.1 What is the FIRST: Schools and Teachers Program?
757.2 What types of projects may the Secretary support under this program?
757.3 Who is eligible for an award?
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757.30 How must funds be used under Schools and Teachers projects?
757.31 What indirect costs are allowed for a School-Level project?
757.32 How does the Secretary limit the use of grant funds?

AUTHORITY: 20 U.S.C. 4811-4812, unless otherwise noted.

SOURCE: 54 FR 18840, May 2, 1989, unless otherwise noted.

Subpart A—General

§ 757.1 What is the FIRST: Schools and Teachers Program?

Under the FIRST: Schools and Teachers Program, the Secretary supports activities designed to improve educational opportunities for, and the performance of, elementary and secondary school students and teachers.

(Authority: 20 U.S.C. 4811)

§ 757.2 What types of projects may the Secretary support under this program?

(a) The Secretary may support the following types of projects under this program:

(1) Schools and Teachers projects designed to improve educational opportunities for, and the performance of, elementary and secondary school students and teachers.

(2) School-Level projects, a type of Schools and Teacher project, conduct-

ed at an individual school or a consortium of schools, under the direction of a full-time teacher or administrator.

(b) If a proposed project could be funded under the Family-School Partnership Program (34 CFR Part 755), the Secretary may decline to consider the application under the Schools and Teachers Program and instead consider it under the Family-School Partnership Program.

(Authority: 20 U.S.C. 4811)

§ 757.3 Who is eligible for an award?

(a) State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), nonprofit organizations, individual public or private schools, consortia of individual schools, and consortia of these schools and institutions may apply for a Schools and Teachers project.

(b) An LEA, acting as the fiscal agent for a full-time teacher or administrator, may apply for a School-Level project described in § 757.2(a)(2).

(Authority: 20 U.S.C. 4811, 4812)

§ 757.4 What activities may the Secretary fund?

The Secretary may fund projects that are designed to improve educational opportunities for, and the performance of, elementary and secondary school students and teachers through one or more of the following activities:

(a) Helping educationally disadvantaged or at risk children to meet higher educational standards.

(b) Providing incentives for improved performance.

(c) Strengthening school leadership and teaching.

(d) Promoting closer ties among school teachers, administrators, other educational personnel, families, and the local community.

(e) Providing opportunities for teacher enrichment and other means to improve the professional status of teachers.

(f) Refocusing priorities and reallocating existing human and financial resources to serve children better.

(g) Establishing closer ties between local schools and an institution of higher education to increase educational achievement.

(h) Increasing the number and quality of minority teachers.

(i) Providing entry-year assistance to new teachers, administrators and other educational personnel.

(j) Improving the teacher certification process, especially for schools, school districts, and States facing serious shortages of teachers.

(k) Teaching students to be responsible for their school environment by involving them in the care and maintenance of their classrooms, and promoting individual responsibility and involvement in civic activities.

(Authority: 20 U.S.C. 4811)

§ 757.5 What priorities may the Secretary establish?

(a) The Secretary may select as priorities one or more of the activities listed in § 757.4 or combinations of these activities.

(b) The Secretary gives competitive preference to a proposed project that meets one or more of the following priorities:

(1) Benefits students or schools with below-average academic performance.

(2) Leads to increased access of all students to a high quality education.

(3) Develops or implements a system for providing incentives to schools, administrators, teachers, students, or others to make measurable progress toward specific goals of improved educational performance.

(c) The Secretary establishes an absolute priority each year by setting aside at least 25 percent of the funds appropriated for FIRST for School-Level projects described in 757.2(a)(2).

(Authority: 20 U.S.C. 4811, 4812)

(See the Education Department General Administrative Requirements (EDGAR) at 34 CFR 75.105 for a description of how the different types of priorities are implemented).

§ 757.6 What regulations apply?

The following regulations apply to the Schools and Teachers Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of

Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations, (except for the definition of "equipment" in 34 CFR 77.1), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this Part 757.

(Authority: 20 U.S.C. 4811-4812)

§ 757.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Equipment
Facilities
Grantee
Local educational agency (LEA)
Nonprofit
Project
Private
Public
Secretary
State educational agency (SEA)

(b) *Other definitions*: The following definitions also apply to this part:

Act means the Fund for the Improvement and Reform of Schools and Teaching Act, Part B, Title III of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988.

At-risk students means students who, because of learning deficiencies, lack of school readiness, limited English proficiency, poverty, educational or economic disadvantage, or physical or emotional handicapping conditions face greater risk of low educational achievement and have greater potential of becoming school dropouts.

Capital equipment means *equipment* as defined in 34 CFR 77.1.

FIRST means the Fund for the Improvement and Reform of Schools and Teaching.

Full-time teacher means a teacher who taught full-time in the school year preceding the school year in which a School-Level project under § 757.2(a)(2) would operate.

Goals means increased graduation rates, reduced dropout rates, increased attendance rates, increased student achievement, other goals of improved educational performance or reduced rates of juvenile delinquency or vandalism.

Incentives means financial rewards, regulatory waivers, open enrollment among schools, grants to schools for innovative projects or other rewards for meeting specific goals of educational improvement.

Institution of higher education or IHE means an institution of high education as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

Regulatory waiver means the authorization by a State or local government of an exception to its regulations, provided that the regulatory waiver does not constitute a waiver of Federal regulations.

School means an elementary or secondary school legally authorized by a State to provide elementary or secondary education in the State.

(Authority: 20 U.S.C. 4811, 4843)

Subpart B—How Does One Apply for an Award?

§ 757.10 What are the procedures for SEA review?

(a) Each application for a grant under this part (other than an application from an SEA) must be forwarded to the appropriate SEA for review.

(b) The Secretary considers comments by the SEA if the comments are received within 30 calendar days of the closing date for the competition.

(Authority: 20 U.S.C. 4812)

Subpart C—How Does the Secretary Make an Award?

§ 757.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 757.21.

(b) The Secretary awards up to 100 points for the criteria in § 757.21.

(c) The maximum possible score for each criterion is indicated in parenthesis.

(d) The Secretary awards up to 25 additional points to an application that addresses one or more of the priorities in § 757.5(b).

(Authority: 20 U.S.C. 4811, 4812)

§ 757.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need for the project.* (15 points) The Secretary reviews each application to determine the magnitude of the need for the proposed project, including the magnitude of the need to improve the performance of students or teachers, or both.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the design of the proposed project and the applicant's plan for carrying it out, including the extent to which the proposed project is likely to improve teaching and learning at the school level.

(c) *Quality of key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine the qualifications of personnel referred to in paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(d) *Educational value.* (20 points) The Secretary reviews each application to determine the educational value of the proposed project, including the extent to which the proposed project would address goals such as—

(1) Strengthening the content of instruction;

(2) Ensuring disadvantaged students equal opportunity for high quality education;

(3) Improving school climate and establishing high standards and the expectation of achievement;

(4) Building a staff of outstanding teachers and principals; or

(5) Instituting accountability for the results of educational activity.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objective of the project; and

(3) The applicant has plans to continue the project after the grant has ended.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and will produce data that are quantifiable.

(g) *National significance.* (15 points) The Secretary reviews each application to determine the national significance of the project, including—

(1) The likely impact of the proposed project;

(2) The magnitude of the expected outcomes; and

(3) The potential transferability of the proposed project to other settings with the likelihood of accomplishing similar results.

(Approved by the Office of Management and Budget under Control Number 1850-0629)

(Authority: 20 U.S.C. 4811, 4812)

§ 757.22 What additional factors does the Secretary consider in making new awards?

In determining the order of selection under EDGAR 75.217(d) for new awards under the Schools and Teachers Program, the Secretary considers, in addition to the criteria in § 757.22, the extent to which funding an application would contribute to—

(a) The diversity of projects funded under a particular competition or under this program; and

(b) The geographical distribution of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 4811, 4812, 4831)

§ 757.23 Under what circumstances does the Secretary consider an unsolicited application?

(a)(1) At any time during a fiscal year, the Secretary may accept and consider for funding unsolicited applications for projects that—

(i) Are designed to carry out one or more of the activities in § 757.4; and

(ii) Do not meet any of the absolute priorities established under any competitions for the FIRST: Schools and Teachers Program announced in the FEDERAL REGISTER for that fiscal year.

(2) In a fiscal year in which the Secretary does not establish absolute priorities, the Secretary does not consider unsolicited applications for funding.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the FEDERAL REGISTER.

(c) Notwithstanding 34 CFR 75.105(b)(1), the Secretary may award up to 25 points to applicants that meet one or more of the priorities in § 757.5(b) without publishing a notice in the FEDERAL REGISTER.

(d) The Secretary evaluates an unsolicited application for funding in accordance with the procedures described in § 757.20.

(Authority: 20 U.S.C. 4811, 4812)

Subpart D—What Conditions Must Be Met After an Award?

§ 757.30 How must funds be used under Schools and Teachers projects?

(a) A grantee shall use funds awarded under this program to supplement but not supplant other resources available to the grantee.

(b) For a School-Level project under § 757.2(a)(2), a grantee shall use funds awarded under this program for activities at the individual school or consortium of schools participating in the project.

(Authority: 20 U.S.C. 4812, 4841)

§ 757.31 What indirect costs are allowed for a School-Level project?

Notwithstanding 34 CFR 80.22, for a School-Level project described in § 757.2(a)(2), indirect costs may not exceed the greater of 2 percent of the direct costs or the actual indirect costs that the grantee can demonstrate are incurred for activities at the individual school or consortium of schools participating in the project.

(Authority: 20 U.S.C. 4841)

§ 757.32 How does the Secretary limit the use of grant funds?

The Secretary may restrict the amount of funds made available for capital equipment purchases to a certain percentage of the total grant for a project.

(Authority: 20 U.S.C. 4041)

PART 758—FIRST: FAMILY-SCHOOL PARTNERSHIP PROGRAM

Subpart A—General

Sec.
758.1 What is the FIRST: Family-School Level Partnership Program?
758.2 Who is eligible for an award?
758.3 How may private schools participate in Family-School Level Partnership projects?

Sec.
758.4 What activities may the Secretary fund?
758.5 What priorities may the Secretary establish?
758.6 What regulations apply?
758.7 What definitions apply?

Subpart B—How Does One Apply for an Award? [Reserved]

Subpart C—How does the Secretary Make an Award?

758.20 How does the Secretary evaluate an application?
758.21 What selection criteria does the Secretary use?
758.22 What additional factors does the Secretary consider in making new awards?
758.23 Under what circumstances does the Secretary consider an unsolicited application?

Subpart D—What Conditions Must Be Met After an Award?

758.30 How must funds be used under Family-School Partnership projects?
758.31 How does the Secretary limit the use of grant funds?

AUTHORITY: 20 U.S.C. 4821-4823, unless otherwise noted.

SOURCE: 54 FR 18840, May 2, 1989, unless otherwise noted.

Subpart A—General

§ 758.1 What is the FIRST: Family-School Partnership Program?

Under the FIRST: Family-School Partnership Program, the Secretary awards demonstration grants for developing family-school partnerships to increase the involvement of families in improving the educational achievement of their children at the preschool, elementary, and secondary education levels.

(Authority: 20 U.S.C. 4821)

§ 758.2 Who is eligible for an award?

An LEA that is eligible to receive a grant under Chapter 1 of Title I of the Elementary and Secondary Act of 1965, as amended, may apply for a Family-School Partnership Program award. (See 34 CFR Part 200 for the regulations governing eligibility of an LEA to participate in the Chapter 1 Program.)

(Authority: 20 U.S.C. 4822)

§ 758.3 How may private schools participate in Family-School Partnership projects?

A grantee may provide, consistent with the number of children enrolled in public and private elementary and secondary schools located in the grantee's school district, for the participation of private elementary and secondary school teachers, students, and students' families in the activities of a project funded under this program.

(Authority: 20 U.S.C. 4823)

§ 758.4 What activities may the Secretary fund?

The Secretary may fund demonstration projects to develop and carry out innovative family-school partnership activities designed to do one or more of the following:

(a) Support the effort of families, through training and other means, to work with children in the home both to attain the instructional objectives of the schools and instill positive attitudes toward education.

(b) Train teachers and other educational personnel involved in the applicant LEA's Chapter 1 program to work effectively as educational partners with the families of Chapter 1 students.

(c) Train families, teachers, and other educational personnel in the LEA's schools to build an educational partnership between home and school.

(d) Provide training for families on the family's educational responsibilities.

(e) Evaulate how well families involvement activities of the LEA's schools are working, what barriers exist to greater participation, and what steps need to be taken to expand participation in such family involvement activities.

(f) Develop new school procedures and practices to meet the changing demographic characteristics and needs of families of school-age children.

(g) Develop modifications of school procedures and practices necessary to encourage the involvement of parents of special groups of students, including minority, disadvantaged, gifted and talented students, and students with handicaps.

(h) Hire, train, and use educational personnel to coordinate family involvement activities and to foster communication among families, educators, and students.

(i) Develop or purchase educational materials to reinforce school learning at home and assist in implementing other home-based education activities that reinforce and extend classroom instruction and student motivation.

(j) Secure technical assistance, including training, to design and carry out family involvement programs.

(Authority: 20 U.S.C. 4823)

§ 758.5 What priorities may the Secretary establish?

(a) The Secretary may select as priorities one or more of the activities listed in §758.4, or combinations of these activities.

(b) The Secretary may limit a priority to a specified instructional level, such as preschool, elementary, or secondary.

(Authority: 20 U.S.C. 4823)

§ 758.6 What regulations apply?

The following regulations apply to the Family-School Partnership Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), (except for the definition of "equipment" in 34 CFR 77.1), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this Part 758.

(Authority: 20 U.S.C. 4821–4823)

§ 758.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Equipment
Facilities
Grantee
Local educational agency (LEA)
Nonprofit
Project
Private
Public
Secretary
State educational agency (SEA)

(b) *Other definitions:* The following definitions also apply to this part:

Act means the Fund for the Improvement and Reform of Schools and Teaching Act, Part B, Title III of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988.

Capital equipment means *equipment* as defined in 34 CFR 77.1.

FIRST means the Fund for the Improvement and Reform of Schools and Teaching.

(Authority: 20 U.S.C. 4821–4823, 4843)

Subpart B—How Does One Apply for an Award? [Reserved]

Subpart C—How Does the Secretry Make an Award?

§ 758.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application according to the criteria in § 758.21.

(b) The Secretary awards up to 100 points for the criteria in § 758.21.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 4821–4823)

§ 758.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need for the project.* (15 points) The Secretary reviews each application to determine the magnitude of the need for the project, including the magnitude of the need for improving edcucational achievement among the students whom the proposed project is designed to benefit.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the design of the proposed project and the applicant's plans for carrying it out, including the extent to which the project is likely to increase the involvement of families in the education of their children.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant as part of its nondiscriminatory employment practices will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) to determine the qualifications of personnel referred to in paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(d) *Educational value.* (20 points) The Secretary reviews each application to determine the educational value of the proposed project, including the extent to which the proposed project would address goals such as—

(1) Ensuring disadvantaged students equal opportunity for high quality education;

(2) Establishing an environment and expectation of achievement for those students;

(3) Fostering accountability among teachers, students, and families for the results of educational activity; and

(4) Improving the educational achievement of students.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable in relation to the objectives of the project; and

(3) The applicant plans to continue the project after the grant has ended.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and will produce data that are quantifiable.

(g) *National significance.* (15 points) The Secretary reviews each application to determine the national significance of the proposed project, including:

(1) The likely impact of the proposed project;

(2) The magnitude of the expected outcomes; and

(3) The potential transferability of the proposed project to other settings with the likelihood of accomplishing similar results.

(Approved by the Office of Management and Budget under Control Number 1850-0629)

(Authority: 20 U.S.C. 4821-4823)

§ 758.22 What additional factors does the Secretary consider in making new awards?

In determining the order of selection under EDGAR § 75.217(d) for new awards under the Family-School Partnership Program, the Secretary considers, in addition to the selection criteria in § 758.21, the extent to which funding an application would contribute to—

(a) The diversity of projects funded under a particular competition or under this program; and

(b) The geographical balance of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 4821-4823)

§ 758.23 Under what circumstances does the Secretary consider an unsolicited application?

(a)(1) At any time during a fiscal year, the Secretary may accept and consider for funding unsolicited applications for projects that—

(i) Are designed to carry out one or more of the activities in § 758.4; and

(ii) Do not meet any of the absolute priorities established under any competitions for the FIRST: Family-School Partnership Program announced in the Federal Register for that fiscal year.

(2) In a fiscal year in which the Secretary does not establish absolute priorities, the Secretary does not consider unsolicited applications for funding.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretaty may fund an unsolicited application without publishing an application notice in the FEDERAL REGISTER.

(c) The Secretary evaluates an unsolicited application for funding in accordance with the procedures described in § 758.20.

(Authority: 20 U.S.C. 4821-4823)

Subpart D—What Conditions Must Be Met After an Award?

§ 758.30 How must funds be used under Family-School Partnership projects?

A grantee shall use funds awarded under this program to supplement but not supplant other resources available to the grantee.

(Authority: 20 U.S.C. 4841)

§ 758.31 How does the Secretary limit the use of grant funds?

The Secretary may restrict the amount of funds made available for capital equipment purchases to a certain percentage of the total grant for a project.

(Authority: 20 U.S.C. 4841)

PART 760—SECRETARY'S DISCRETIONARY PROGRAM

Subpart A—General

Sec.

760.1 What is the Secretary's Discretionary Program?
760.2 Who is eligible for a grant under the Secretary's Discretionary Program?
760.3 What regulations apply to the Secretary's Discretionary Program?
760.4 What definitions apply to this program?

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

760.10 What types of projects does the Secretary assist under this program?
760.11 Does the Secretary establish priorities for this program?

Subpart C—How Does One Apply for a Grant?

760.20 What assurance must an applicant make?

Subpart D—How Does the Secretary Make a Grant?

760.30 How does the Secretary evaluate an application?
760.31 How does the Secretary evaluate unsolicited applications?
760.32 What selection criteria does the Secretary use?
760.33 How does the Secretary select an application for funding?

Subpart E—What Conditions Must Be Met by the Grantee?

760.40 May the Secretary restrict the use of funds under this program?
760.41 May program funds be used for construction purposes?

AUTHORITY: Sec. 583 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3851), unless otherwise noted.

SOURCE: 49 FR 43227, Oct. 26, 1984, unless otherwise noted.

Subpart A—General

§ 760.1 What is the Secretary's Discretionary Program?

The Secretary's Discretionary Program supports projects designed to meet the special educational needs of educationally deprived children or to improve elementary and secondary education for children consistent with the purposes of the Education Consolidation and Improvement Act of 1981.

(Authority: 20 U.S.C. 3851)

§ 760.2 Who is eligible for a grant under the Secretary's Discretionary Program?

State educational agencies (SEA's), local educational agencies (LEA's), institutions of higher education, and other public and private agencies, organizations, and institutions are eligible for a grant under the Secretary's Discretionary Program.

(Authority: 20 U.S.C. 3851)

§ 760.3 What regulations apply to the Secretary's Discretionary Program?

(a) The following regulations apply to grants made under the Secretary's Discretionary Program:

(1) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 760.

(b) The regulations in this Part 760 do not apply to—

(1) Contracts awarded under the Secretary's Discretionary Program; and

(2) Grants and contracts awarded under any grant program, such as the National Diffusion Network, for which the Secretary issues separate regulations.

Note: Grants awarded under the National Diffusion Network are subject to the regulations in 34 CFR Part 796.

(Authority: 20 U.S.C. 3851; 3474)

§ 760.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Local educational agency
Minor remodeling
Nonprofit
Private
Project
Public
Secretary
State education agency

(b) *Definitions that apply to this Part.* The following definitions apply to this Part:

Children means persons—

(1) Up to age 21 who are entitled to a free public education not above grade 12; or

(2) Who are of preschool age.

Construction means the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities.

(Authority: 20 U.S.C. 3875)

ECIA means Education Consolidation and Improvement Act of 1981.

Educationally deprived children means children whose educational attainment is below the level that is appropriate for children of their age.

(Authority: 20 U.S.C. 3851; 3474)

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

§ 760.10 What types of projects does the Secretary assist under this program?

(a) The Secretary may fund projects that—

(1) Provide a national source for gathering and disseminating information on the effectiveness of programs designed to meet the special educational needs of educationally deprived children and others served by the

ECIA, and for assessing the needs of such individuals;

(2) Carry out research and demonstrations related to the purposes of the ECIA;

(3) Are designed to improve the training of teachers and other instructional personnel needed to carry out the purposes of the ECIA; or

(4) Provide technical assistance to SEA's and LEA's in the implementation of programs under the ECIA.

(b) The Secretary may not provide general operating revenue to meet local needs to any applicant under this program.

(Authority: 20 U.S.C. 3851)

§ 760.11 Does the Secretary establish priorities for this program?

(a) Each year, through one or more notices published in the FEDERAL REGISTER, the Secretary announces the priorities for this program, if any, and the manner in which those priorities will be implemented.

(b) The Secretary selects priorities by taking into consideration unmet national needs within the scope of the ECIA.

(c) The Secretary may also fund any project that does not meet an established priority if the project—

(1) Is limited to activities—

(i) That are at the elementary or secondary education level; or

(ii) That were specifically authorized by one of the programs consolidated in the ECIA as listed in section 561 of the ECIA except as limited by the ECIA; and

(2) Satisfies all other requirements for funding under this program.

(d) If the Secretary selects priorities, the Secretary may establish a separate competition for each priority selected. If a separate competition is established for a priority, the Secretary may reserve all applications that relate to that priority for review under the separate competition.

(e) The Secretary may decline to fund a project that is eligible for funding under a specific Department of Education grant competition.

NOTE: EDGAR establishes the method for applying priorities. See 34 CFR 75.105 (Annual priorities).

(Authority: 20 U.S.C. 3851; 3474)

Subpart C—How Does One Apply for a Grant?

§ 760.20 What assurance must an applicant make?

An applicant must make an assurance in its application that it will comply with the provisions of section 586 of the ECIA, governing equitable participation of private school children in the purposes and benefits of Chapter 2, if the applicant—

(a) Is an LEA; and

(b) Proposes to use grant funds to provide—for the benefit of public school students—services, materials, or equipment (including training for teachers or other personnel serving the school children).

NOTE: EDGAR establishes requirements for private school children participation. See 34 CFR 75.650.

(Approved by the Office of Management and Budget under control number 1880-0505)

(Authority: 20 U.S.C. 3862)

Subpart D—How Does The Secretary Make a Grant?

§ 760.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the criteria in § 760.32 of this part.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 760.32.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the FEDERAL REGISTER, The Secretary may distribute the reserved 15 points among the criteria listed in § 760.32.

(Approved by the Office of Management and Budget under control number 1880-0505)

(Authority: 20 U.S.C. 3851; 3774)

[49 FR 43227, Oct. 26, 1984, as amended at 52 FR 22442, June 12, 1987]

§ 760.31 How does the Secretary evaluate unsolicited applications?

(a) At any time during a fiscal year, the Secretary may accept and consider for funding unsolicited applications for projects that do not meet a priority established in accordance with § 760.11(a) and (b).

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the FEDERAL REGISTER.

(c) The Secretary may select an unsolicited application for funding in accordance with the procedures contained in § 760.30(a) through (c).

(d) The Secretary assigns the reserved 15 points under § 760.30(b) to the selection criterion at § 760.32(g) (National significance) so that the maximum number of possible points for this criterion is 30.

(Authority: 20 U.S.C. 3851)

[52 FR 22442, June 12, 1987]

§ 760.32 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purposes of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly; and

(vi) For applicants required to provide an opportunity for participation of students enrolled in private schools—a clear description of how the applicant will provide that opportunity.

(b) *Quality of key personnel.* (15 Points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project;

(iv) The extent to which the applicant, as a part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 Points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference: See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Improving elementary and secondary education.* (15 Points)

(1) The Secretary reviews each application for information that shows the extent to which the project contributes to the improvement of elementary and secondary education.

(2) The Secretary looks for information such as—

(i) The objectives of the project; and

(ii) The manner in which the objectives of the project further the purpose of improving elementary and secondary education.

(g) *National significance.* (15 Points)

(1) The Secretary reviews each application for information that shows the national significance of the project.

(2) The Secretary looks for information that shows the extent to which the project makes a contribution of national significance, as measured by factors such as—

(i) The extent to which the project addesses educational problems of national significance;

(ii) The extent to which the project meets specific national needs as shown by—

(A) The needs addressed by the project;

(B) The manner in which the applicant identified those needs;

(C) The manner in which those needs are met by the project; and

(D) The benefits to be gained by meeting those needs;

(iii) The extent to which the project involves techniques that are innovative;

(iv) The extent to which the project builds upon and adds to current educational information and research; and

(v) The extent to which the project provides a model or other information that could be used by others to solve educational problems.

(h) *Applicant's commitment and capacity.* (10 Points)

The Secretary looks for information that shows the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Approved by the Office of Management and Budget under control number 1880-0505)

(Authority: 20 U.S.C. 3851; 3474)

[49 FR 43227, Oct. 26, 1984. Redesignated and amended at 52 FR 22442, June 12, 1987]

§ 760.33 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in § 760.32, the Secretary may determine whether or not the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition.

(b) The Secretary may select other applications for funding if doing so would improve—

(1) The geographic distribution of projects funded under a particular competition or under this program; or

(2) The diversity of activities or projects funded under a particular competition or under this program.

(Approved by the Office of Management and Budget under control number 1880-0505)

(Authority: 20 U.S.C. 3851; 3474)

[49 FR 43227, Oct. 26, 1984. Redesignated and amended at 52 FR 22442, June 12, 1987]

Subpart E—What Conditions Must Be Met by the Grantee?

§ 760.40 May the Secretary restrict the use of funds under this program?

The Secretary may restrict the amount of funds made available through a grant under this program that may be used to purchase equipment.

(Authority: 20 U.S.C. 3851)

§ 760.41 May program funds be used for construction purposes?

(a) No recipient may use grant funds for repairs, minor remodeling, or construction of private school facilities.

(b) To the extent necessary for an LEA to carry out its responsibility under section 596 of the ECIA to provide an opportunity for the equitable participation of private school children, an LEA may use grant funds for the construction of public facilities.

(c) Subject to the restrictions in paragraph (a) of this section, a recipient may use grant funds for repairs or minor remodeling only to the extent necessary to carry out an approved project under the regulations in this part.

(Authority: 20 U.S.C. 3851; 3474)

PART 761—LEADERSHIP IN EDUCATIONAL ADMINISTRATION DEVELOPMENT PROGRAM

Subpart A—General

Sec.
761.1 What is the Leadership in Educational Administration, Development Program?
761.2 Who is eligible to apply for assistance under this program?
761.3 What regulations apply to this program?
761.4 What definitions apply to this program?

Subpart B—What Services Does the Secretary Support Under This Program?

761.10 What assistance does the Secretary provide under this program?
761.11 What services are provided by a technical assistance center funded under the LEAD Program?

Sec.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Select an Applicant for Funding?

761.30 How does the Secretary evaluate an application?
761.31 What selection criteria does the Secretary use to evaluate an application under this program?
761.32 What special considerations may the Secretary use in selecting an application for funding?
761.33 What funding limitations apply to awards under this program?

Subpart E—What Conditions Must be Met by a Grantee?

761.40 What restrictions exist on the use of funds awarded under this program?
761.41 What requirements must be met by a grantee?

AUTHORITY: 20 U.S.C. 1109 to 1109d, unless otherwise noted.

SOURCE: 52 FR 9442, Mar. 24, 1987, unless otherwise noted.

Subpart A—General

§ 761.1 What is the Leadership in Educational Administration Development Program?

The Leadership in Educational Administration Development (LEAD) Program provides financial assistance to eligible organizations that establish or operate technical assistance centers. The technical assistance centers funded under this program must promote development of certain leadership skills for school administrators, including attention to increasing access for minorities and women to administrative positions.

(Authority: 20 U.S.C. 1109)

§ 761.2 Who is eligible to apply for assistance under this program?

Local educational agencies, intermediate school districts, State educational agencies, institutions of higher education, private management organizations, nonprofit organizations, or consortia of those entities are eligible to apply for assistance under this program.

(Authority: 20 U.S.C. 1109b)

§ 761.3 What regulations apply to this program?

The following regulations apply to the Leadership in Educational Administration Development Program:

(a) The Educational Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Departmental Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 761.

(Authority: 20 U.S.C. 1109)

§ 761.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Equipment
Facilities
Local educational agency (LEA)
Nonprofit
Project
Private
Public
Reporting and recordkeeping requirement
Secretary
State educational agency (SEA)

(b) *Other definitions that apply to this part.* The following definitions also apply to this part:

Consortium means an association or partnership of eligible parties formed for the establishment or operation of a technical assistance center.

(Authority: 20 U.S.C. 1109)

Institution of higher education means a public or private nonprofit institution of higher education as defined in 34 CFR 668.2.

Leadership skills means such skills as managerial, executive, administrative, evaluative, communication and disciplinary, and related techniques that enhance an individual's ability to carry out the functions and duties of a school administrator.

School administrator means a principal, assistant principal, district superintendent, and other local public or private school or district administrator who exercises supervision and control over the provision of an elementary or secondary education program, including its content, direction, support facilities and related elements. The term also includes an individual who participates in educational, training, or developmental programs in preparation for responsibility as an elementary or secondary school administrator.

(Authority: 20 U.S.C. 1109d)

State means a State of the United States of America, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Government of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Technical assistant center means an organization maintained by the recipient of assistance under the LEAD program to provide services, including training, to others for the purpose of enhancing the leadership skills of elementary and secondary school administrators in a State.

(Authority: 20 U.S.C. 1109, 1109d)

NOTE: For the award of fiscal year 1986 and 1987 funds under this program, the Appropriations Act, 1987, entitled "Making Continuing Appropriations for Fiscal Year 1987," Pub. L. 99-500 requires that the definition of the term "State" be restricted to include only the District of Columbia in addition to the several States of the Union.

Subpart B—What Services Does the Secretary Support Under This Program?

§ 761.10 What assistance does the Secretary provide under this program?

The Secretary provides financial assistance in the form of grants to eligible organizations that establish or operate a technical assistance center.

(Authority: 20 U.S.C. 1109, 31 U.S.C. 6304)

§ 761.11 What services are provided by a technical assistance center funded under the LEAD program?

(a) The Secretary funds technical assistance centers to provide the following services to school administrators in the State served by the center:

(1) Collecting information on school leadership skills.

(2) Assessing the leadership skills of school administrators that participate in programs sponsored by the center based on criteria related to effective leadership.

(3) Conducting training programs on leadership skills for new school administrators and for practicing school administrators, with particular emphasis on recruiting women and minority administrators to participate in those programs.

(4) Maintaining consultative programs that provide advice and guidance on leadership skills to clients at sites within school districts, as well as at the center.

(5) Establishing and maintaining training curricula and instructional materials on leadership skills, drawing on expertise in business and industry, educational institutions, civilian and military governmental agencies, and existing effective schools.

(6) Initiating programs that promote the improvement of leadership skills by—

(i) Making available the services of executives from business, scholars from various institutions of higher education, and practicing school administrators; and

(ii) Providing school administrators with internships in business, industry, and effective school districts.

(7) Disseminating information on leadership skills associated with effective schools.

(8) Establishing model projects for administrative leadership development that draw upon the most reliable and valid principles of effective educational administration.

(b) The applicant shall indicate in its application how the resources for which it is applying will be allocated among each of the services in paragraph (a) of this section, based upon the applicant's assessment of the needs of school administrators within its State and of alternative training programs available. In selecting applicants, the Secretary considers the applicant's justification as to why each service would receive the level of support proposed, including reasons for seeking minimal or no Federal funding for any service in paragraph(a) of this section.

(Authority: 20 U.S.C. 1109b)

Subpart C—[Reserved]

Subpart D—How does the Secretary Select an Applicant for Funding?

§ 761.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the selection criteria in § 761.31.

(b) The Secretary scores an application based on a 100-point scale.

(c) The maximum number of points for each criterion is indicated in parentheses after the heading of the criterion.

(Authority: 20 U.S.C. 1109)

§ 761.31 What selection criteria does the Secretary use to evaluate an application under this program?

The Secretary uses the following criteria in evaluating an application—

(a) *Plan of operation.* (10 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The extent to which the proposed allocation of resources among the services listed in § 761.11(a) will address the needs of school administrators within the State;

(5) How well the project builds upon, complements or otherwise takes into account other related administrator leadership activities in the State; and

(6) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(b) *Quality of key personnel.* (20 Points)

(1) The Secretary reviews each application to determination the quality of key personnel, including but not restricted to consultants and other contractors, the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel will commit to the project.

(2) To determine the qualifications of these key personnel, the Secretary considers—

(i) Experience, training, and professional productivity, in fields related to the objectives of the project; and

(ii) Any other qualifications, including credentials relating to the development of human relations skills, that pertain to the quality of the project.

(c) *Budget and cost effectiveness.* (10 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) The project supplements other related leadership development activities within the State; and

(3) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(1) The applicants design for evaluation specifies the relationship of program goals and activities to anticipated outcomes as well as how the outcomes would be assessed; and

(2) The applicant's methods of evaluation are appropriate to the project, and to the extent possible, are objective and produce data that are quantifiable, as well as valid and relevant.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(e) *Adequacy of organizational resources and commitment.* (20 Points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project and of organizational commitment to carrying out the activities of the technical assistance center, demonstrated through—

(1) Facilities, equipment, and supplies;

(2) Matching funds for the proposed project in cash or in kind at least equal in amount to the amount of Federal funds available to a grant under this program;

(3) Plans and commitment to continue to operate the technical assistance center activities after expiration of Federal funding provided under this program; and

(4) Establishment of a policy advisory committee (including but not limited to members of the business community, private foundations, and local and State educational agencies) representative of groups whose support, guidance, and commitment will promote both accomplishment of the project's goals and continuation of the project after Federal funding terminates.

(Authority: 20 U.S.C. 1109c)

(f) *Potential for enhancing the leadership skills of school administrators.* (20 Points) The Secretary reviews each application to determine the potential of the project for enhancing the leadership skills of school administrators, with particular attention to—

(1) The application of information on leadership skill development and executive performance, including but not restricted to information identified by graduate schools of management and information gained from research or knowledge of effective practice, to the design of the project's leadership development activities;

(2) The identification of leadership skills and knowledge pertinent to the needs of school administrators to serve as the focus of project activities;

(3) The extent to which proposed activities will improve leadership skills for project participants;

(4) The extent to which proposed training activities will contribute to increasing access of women and minorities to administrative positions; and

(5) The nature of human relations skills to be developed, their relationship to the problems school adminis-

trators face, and the manner in which they will be developed.

(Authority: 20 U.S.C. 1109, 1109b, and 1109c)

(g) *Organizational arrangements and capacity.* (15 Points) The Secretary reviews each application to determine the extent to which the applicant's organizational arrangements and capacity—

(1) Reveal a record of successful organizational performance on previous activities similar in nature or related to proposed project services;

(2) Are likely to elicit commitment to project goals and services from intended participants and target groups;

(3) Make available to the project the organizational expertise and combinations of staff and organizational resources required for successful provision of project services;

(4) Involve private sector managers and executives in the conduct of the project; and

(5) Ensure that project staff have access to resources and activities needed in developing and providing the project services.

(Approved by the Office of Management and Budget under control number 1850-0572)

(Authority: 20 U.S.C. 1109, 1109b, and 1109c)

§ 761.32 What special considerations may the Secretary use in selecting an application for funding?

In determining the order of selection of new grants under this program, the Secretary may take into consideration the following:

(a) The extent to which an application will enhance the diversity of activities or projects funded under a particular competition.

(b) The need to distribute funds for projects on a fair and equitable basis.

(Authority: 20 U.S.C. 1109)

§ 761.33 What funding limitations apply to awards under this program?

(a) Grants under this program are for a term of three years.

(b) Grants are not renewable, except that a one-time three-year extension may be provided by the Secretary if the grantee maintains the same level of services it provided under the original grant.

(c) If an extension is granted, the Secretary issues a supplemental grant equal to one-half of the amount of the original award provided to the grantee.

(d) Subject to the availability of funds, of the amount appropriated for any fiscal year, the Secretary provides that not less than $150,000 for each State will be availaible from which to award a grant, in an amount consistent with the intended recipient's application and the provisions of paragraph (e) of this section, to establish or operate a technical assistance center in each State.

(e) The Secretary provides funds for each award in an amount not to exceed the recipient's contribution of matching funds in cash or in kind.

(Authority: 20 U.S.C. 1109a, 1109c)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 761.40 What restrictions exist on the use of funds awarded under this program?

(a) A technical assistance center funded under this program shall make its services available to school administrators from any of the public and private educational agencies, including local educational agencies, nonpublic school districts, and independent schools, located within the State served by that center.

(b) Funds made available through an award under this program may not be used to—

(1) Supplant funds already used to support services and activities included in a technical assistance center's program;

(2) Purchase equipment; or

(3) Construct, repair, remodel, or alter facilities or sites for use in projects funded under this program.

(c) The Secretary may restrict the amount of funds used to pay stipends for educational personnel to participate in training activities.

(Authority: 20 U.S.C. 1109, 1109c)

§ 761.41 What requirements must be met by a grantee?

A technical assistance center funded under this program shall do the following:

(a) Involve private sector managers and executives in the conduct of the center's program.

(b) Provide matching funds for the project in cash or in kind at least equal in amount to the amount of funds awarded under the grant.

(c) Demonstrate a commitment to continue to provide the services and activities of the center after the expiration of Federal funding under this program.

(d) Establish a policy advisory committee including but not limited to members of the business community, private foundations, and local and State educational agencies.

(e) Describe the nature of human relations skills to be developed, their relationship to problems school administrators face, the manner in which they will be developed, and credentials of project staff who may be responsible for developing these skills.

(f) Conduct an evaluation of the project.

(Authority: 20 U.S.C. 1109c)

PART 762—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT FELLOWS PROGRAM

Subpart A—General

Sec.
762.1 What is the Office of Educational Research and Improvement Fellows Program?
762.2 Who is eligible for a fellowship?
762.3 What types of projects may a fellow conduct under this program?
762.4 What regulations apply?
762.5 What definitions apply?

Subpart B—How Does an Individual Apply for a Fellowship?

762.10 How does an individual apply for a fellowship?

Subpart C—How Does the Secretary Award a Fellowship?

762.20 How is a fellow selected?
Sec.
762.21 What criteria does the Secretary use to rate the fellows?
762.22 How does the Secretary determine the amount of a fellowship?
762.23 What payment methods may the Secretary use?
762.24 What are the procedures for payment of a fellowship award directly to a fellow?
762.25 What are the procedures for payment of a fellowship award through the fellow's employer?

Subpart D—What Conditions Must Be Met by a Fellow?

762.30 Where may the fellowship project be conducted?
762.31 What is the duration of a fellowship?
762.32 What reports are required?

AUTHORITY: 20 U.S.C. 1221e, unless otherwise noted.

SOURCE: 52 FR 29608, Aug. 10, 1987, unless otherwise noted.

Subpart A—General

§ 762.1 What is the Office of Educational Research and Improvement Fellows Program?

Under the Office of Educational Research and Improvement (OERI) Fellows Program, the Secretary provides Federal financial assistance enabling individuals to make contributions to the improvement of education by engaging in educational research.

(Authority: 20 U.S.C. 1221e)

§ 762.2 Who is eligible for a fellowship?

(a) Only individuals are eligible to be recipients of fellowships.

(b) Any individual who has training and experience that indicates that he or she has the potential to conduct educational research is eligible to apply for assistance under this program.

(c) An individual must be a citizen of the United States to be eligible for a fellowship under this program.

(Authority: 20 U.S.C. 1221e)

§ 762.3 What types of projects may a fellow conduct under this program?

A fellow shall conduct an educational research project addressing one or more areas—

(a) Teaching and learning, including educational institutions and academic disciplines, the economic, social, and policy context of education, and research findings and proven exemplary practices which may be adopted to improve the quality of educational practice;

(b) Education statistics, pertinent to the present condition of education, trends in education and what does and does not work in education;

(c) Library resources and services;

(d) Procedures and techniques for dissemination of education information to policymakers at the Federal, State, and local levels, the education community and the general public; and

(e) Other areas either proposed by the applicant and determined by the Secretary to be worthy of support or established by the Secretary.

(Authority: 20 U.S.C. 1221e)

§ 762.4 What regulations apply?

The regulations in this Part 762 apply to this program.

(Authority: 20 U.S.C. 1221e)

§ 762.5 What definitions apply?

(a) *Definitions in EDGAR.*

(1) The following terms used in this part are defined in 34 CFR 77.1:

Department
EDGAR
Secretary

(2) The definitions in 34 CFR 77.1 of "Applicant", "Application", "Award", and "Project" do not apply to this part.

(b) *Other definitions.* The following definitions also apply to this part:

Applicant means an individual requesting a fellowship under this program.

Application means a written request for a fellowship under this program.

Award means an amount of funds provided for fellowship activities.

Educational research means one or more of the following activities in education or fields related to education: basic and applied research, planning, surveys, assessments, evaluations, investigations, experiments, development, and demonstrations.

Fellow means a fellowship recipient under this part.

Fellowship means an award made to an individual to carry out an educational research project in OERI.

Project means the work to be engaged in by the fellow during the period of the fellowship.

(Authority: 20 U.S.C. 1221e)

Subpart B—How Does an Individual Apply for a Fellowship?

§ 762.10 How does an individual apply for a fellowship?

An individual shall apply to the Secretary for a fellowship award in response to an application notice published by the Secretary in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1221e)

Subpart C—How Does the Secretary Award a Fellowship?

§ 762.20 How is a fellow selected?

The Secretary rates applications using the criteria in § 762.21 and then determines the order in which the applications will be selected. The Secretary may consider the following in making this determination:

(a) The rating of the applications based on the criteria.

(b) Whether the selection of an application would increase the subject matter diversity of fellowship projects awarded under this program.

(Authority: 20 U.S.C. 1221e)

§ 762.21 What criteria does the Secretary use to rate the fellows?

The Secretary uses the following criteria in evaluating each applicant for a fellowship:

(a) *Quality of the plan for the proposed activity.* (40 Points) The Secretary reviews the quality of each proposed project to ensure that—

(1) The design of the project is of high quality;

(2) The applicant's project relates to the purposes of the fellowship program; and

(3) The applicant's project is feasible.

(b) *Significance of the proposed project.* (20 Points) The Secretary assesses the significance of each proposed project to ensure that—

(1) The project addresses important issues in American education;

(2) Project results will benefit American education; and

(3) The project will enhance education practice.

(c) *Qualification of the applicant.* (40 Points) The Secretary reviews the qualifications of each applicant to ensure—

(1) The appropriateness and quality of the education and experience of the applicant as they may be related to the proposed project; and

(2) Demonstrated ability to produce a final product which is comprehensive and useful.

(Approved by the Office of Management and Budget under control number 1850-0620)

(Authority: 20 U.S.C. 1221e)

[52 FR 29608, Aug. 10, 1987, as amended at 53 FR 49148, Dec. 6, 1988]

§ 762.22 How does the Secretary determine the amount of a fellowship?

The amount of a fellowship includes—

(a) A stipend, based on—

(1) The fellow's current annual salary prorated for the length of the fellowship; or

(2) If a fellow has no current salary, the fellow's education and experience; and

(b) A subsistence allowance and necessary travel expenses related to the fellowship, consistent with Title 5 U.S.C. Chapter 57.

(Authority: 20 U.S.C. 1221e)

§ 762.23 What payment methods may the Secretary use?

(a) The Secretary may pay a fellowship award directly to the fellow or through the fellow's employer.

(b) The secretary considers the preferences of the fellow in determining whether to pay a fellowship award directly to the fellow or through the fellow's employer; however, the Secretary pays a fellowship award through the fellow's employer only if the employer enters into an agreement with the Secretary to comply with the provisions of § 762.25.

(Authority: 20 U.S.C. 1221e)

§ 762.24 What are the procedures for payment of a fellowship award directly to the fellow?

(a) If the Secretary pays a fellowship award directly to the fellow, after the Secretary determines the amount of a fellowship award, the fellowship recipient shall submit a payment schedule to the Secretary for approval. The Secretary advises the recipient to the approved schedule.

(b) If the fellow does not complete the fellowships, the fellow shall return to the Secretary a prorated portion of the stipend and any unused subsistence allowance and travel funds at the time and in the manner required by the Secretary.

(Authority: 20 U.S.C. 1221e)

§ 762.25 What are the procedures for payment of a fellowship award through the fellow's employer?

(a) If the Secretary pays a fellowship award through the fellow's employer, the employer shall submit a payment schedule to the Secretary for approval.

(b) The employer shall pay the fellow the stipend and subsistence allowance according to the payment schedule approved by the Secretary. If the fellow does not complete the fellowship, the fellow shall return to the employer a prorated portion of the stipend and any unused subsistence allowance and travel funds. The employer shall return the funds to the Secretary at the time and in the manner required by the Secretary. The employer shall also return to the Secretary any portion of the stipend and subsistence allowance and travel funds not yet paid by the employer to the fellow.

(Authority: 20 U.S.C. 1221e)

Subpart D—What Conditions Must be Met by a Fellow?

§ 762.30 Where may the fellowship project be conducted?

A fellow carries out a project at OERI in Washington, D.C. unless the Secretary determines that unusual circumstances exist and authorizes the fellow to carry out all or part of the project elsewhere.

(Authority: 20 U.S.C. 1221e)

§ 762.31 What is the duration of a fellowship?

The Secretary awards a fellowship for at least four and no more than 12 months of full-time activity, or the equivalent in less than full-time participation.

(Authority: 20 U.S.C. 1221e)

§ 762.32 What reports are required?

A fellow shall submit a final report to the Secretary no later than 90 days after the completion of the fellowship. Each report must contain a description of the activities conducted by the fellow and a thorough analysis of the degree to which the objectives of the project have been achieved. In addition, the report must include a detailed discussion of how the results of the educational research could be utilized to enhance educational practice in the United States.

(Approved by the Office of Management and Budget under control number 1850-0610)

(Authority: 20 U.S.C. 1221e)

PART 763—DRUG ABUSE EDUCATION AND PREVENTION AUDIOVISUAL MATERIALS PROGRAM

Subpart A—General

Sec.
763.1 What is the Drug Abuse Education and Prevention Audiovisual Program?
763.2 Who is eligible for an award under this program?
763.3 What types of projects does the Secretary assist under this program?
763.4 What priorities may the Secretary establish for this program?
763.5 What regulations apply to this program?
763.6 What definitions apply to this program?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

763.20 How does the Secretary evaluate an application?
763.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

763.30 What message must project materials convey regarding illicit drug use?
763.31 What other standards must an applicant meet?
763.32 May funds be used to purchase equipment?

Authority: Pub. L. 99-591, 100 Stat. 3341-360.

Source: 52 FR 38067, Oct. 13, 1987, unless otherwise noted.

Subpart A—General

§ 763.1 What is the Drug Abuse Education and Prevention Audiovisual Materials Program?

The Drug Abuse Education and Prevention Audiovisual Materials Program supports the production and distribution of audiovisual materials primarily to local educational agencies for use in drug abuse prevention and education programs.

(Authority: Pub. L. 99-591, 100 Stat. 3341-360)

§ 763.2 Who is eligible for an award under this program?

The Secretary may make an award under this program to a State educational agency, local educational agency, institution of higher education, or to another profit or nonprofit agency, organization, or institution.

(Authority: Pub. L. 99-591, 100 Stat. 3341-360)

§ 763.3 What types of projects does the Secretary assist under this program?

(a) The Secretary makes awards for projects that produce and distribute audiovisual materials for use in drug abuse education and prevention programs for elementary and secondary school students.

(b) The audiovisual materials produced must be closed-captioned videotapes with brief teacher guides and, if appropriate, student materials for classroom use.

(c) Recipients shall produce and distribute audiovisual materials for drug abuse education and prevention programs in both public and private elementary and secondary schools.

(Authority: Pub. L. 99-591, 100 Stat. 3341-360)

§ 763.4 What priorities may the Secretary establish for this program?

The Secretary may establish as priorities particular grade levels, types of substance abuse, or any combination of grade levels or types of substance abuse.

(Authority: Pub. L. 99-591, 100 Stat. 3341-360)

§ 763.5 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR), in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 763.

(c) The cost principles referenced in 34 CFR 74.174 apply to profit-making organizations that receive awards under this program.

(Authority: Pub. L. 99-591, 100 Stat. 3341-360)

§ 763.6 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Local educational agency
Private
Project
Public
Secretary
State
State educational agency

(b) *Other Definitions*—The following definitions also apply to this part:

Drug abuse education and prevention means prevention, early intervention, rehabilitation referral, and education related to the use and abuse of controlled, illegal, addictive, or harmful substances, including the abuse of alcohol.

Illicit drug use means the use of illegal drugs and the abuse of other drugs and alcohol.

Institution of higher eduction, secondary school, and *nonprofit* have the meanings provided in section 1001 of the Elementary and Secondary Education Act of 1965 in effect prior to October 1, 1981.

(Authority: Pub. L. 99-591, 100 Stat. 3341-360)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 763.20 How does the Secretary evaluate an application?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the selection criteria in § 763.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible points for each criterion are indicated in parentheses.

(d) The Secretary may select applications for funding other than those most highly rated if doing so would improve the diversity of activities or projects funded.

(e) The Secretary may, after applying the criteria in § 763.21, confirm the production and distribution capacity of highly rated applicants in order to make final determinations for awards. That confirmation may include review and inspection of an applicant's facilities.

(Authority: Pub. L. 99-591, 100 Stat. 3341-360)

§ 763.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Creativity and effectiveness.* (15 points) The Secretary reviews each application to determine how creatively and effectively the applicant's proposed project will incorporate a strong message to elementary and secondary school students that illicit drug use is wrong and harmful.

(b) *Applicant's capacity.* (15 points) The Secretary reviews each application to determine the applicant's capacity successfully to complete the production and distribution of audiovisual materials of high quality, including—

(1) The applicant's ability to acquire and organize the necessary expertise, production personnel, and, if necessary, actors and other talent—as evidenced by examples of past performance;

(2) The applicant's experience in developing educational materials for elementary and secondary schools;

(3) The applicant's experience and knowledge concerning drug abuse education and prevention;

(4) The applicant's access to equipment and facilities to produce audiovisual materials; and

(5) The quality of the applicant's work, as evidenced by a sample videotape that demonstrates professional competence in the production of audiovisual education materials.

(c) *Production plan.* (25 points) The Secretary reviews each application to determine how adequately the applicant's production plan will—

(1) Ensure the use of approaches appropriate for the age levels of the target audience;

(2) Incorporate the advice of experts in drug abuse education and prevention;

(3) Incorporate research findings likely to improve drug abuse education and prevention programs;

(4) Involve teachers, school officials, parents, and students in designing the project; and

(5) Include field-testing of materials in classroom settings and make appropriate modifications, if needed, before the materials are distributed in final form.

(d) *Distribution plan.* (12 points) The Secretary reviews each application to determine how adequately the applicant's distribution plan will—

(1) Inform appropriate school authorities of the purpose and availability of materials produced by the applicant's project, and encourage their maximum use;

(2) Effectively and economically distribute these materials for broad use by schools; and

(3) Provide for periodic review and improvement of the applicant's distribution methods.

(e) *Management plan.* (12 points) The Secretary reviews each application to determine the quality of the management plan for the project, including—

(1) The extent to which the plan is effective and ensures proper, timely, and efficient completion of the project;

(2) The extent to which the plan's project design involves measurable timeliness for achieving significant steps in production and distribution; and

(3) The manner in which the plan will use resources and personnel successfully to complete the project.

(f) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel and applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of the audiovisual producer and other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraph (f)(1) of this section, the Secretary considers experience and training in fields related to the objectives of the project.

(g) *Budget and cost-effectiveness.* (6 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project, as well as to timeliness for achieving significant steps in production and distribution.

(Authority: Pub. L. 99-591, 100 Stat. 3341-360)

Subpart D—What Conditions Must Be Met After an Award?

§ 763.30 What message must project materials convey regarding illicit drug use?

All materials produced or distributed with funds made available under this program must reflect the message that illicit drug use is wrong and harmful.

(Authority: Pub. L. 99-591, 100 Stat. 3341-360)

§ 763.31 What other standards must an applicant meet?

(a)(1) A recipient of funds under this part shall secure and provide to the Secretary on a timely basis prior to the broadcast or publication of materials (including field testing) produced with program funds, proof that the recipient has obtained all of the releases and rights that are necessary to ensure the authorized and noninfringing broadcast or publication of audiovisual materials funded under the program.

(2) These rights and releases must at a minimum include signed talent releases from all persons recognizably photographed, recorded or otherwise depicted, including, if necessary, releases from parents or guardians of minors who appear in or on audiovisual materials produced with program funds; worldwide music performance rights; and worldwide exhibition rights for exhibiting by the Government of others during the distribution phase of the project.

(b) Commercialization, or the implied or actual endorsement of commercial products or services through their focused portrayal, depiction, or use in audiovisual materials produced under this program, is prohibited.

(c)(1) Recipients and third parties may contribute to the production and distribution of audiovisual materials under this part only with the prior written approval of the Secretary.

(2) Any contribution under paragraph (c)(1) of this section is subject to the regulations on cost sharing in 34 CFR Part 74; Subpart G.

(3) If audiovisual materials are produced with funds or other assistance in addition to funds provided by the Secretary under this program, an appropriate acknowledgment of that additional assistance must be placed after the Department's credit line and disclaimer referred to in paragraph (e) of this section.

(d) The videotapes produced under the regulations in this part must be of broadcast quality acceptable to public and commercial broadcasters in the United States. Compliance with the standards set forth in the Federal Communications Commission rules at 47 CFR 73.682, 73.687, and 73.699 constitute an acceptable standard of broadcast quality.

(e) Materials produced under this part must include a credit line and disclaimer at the end stating as follows: "These materials were produced with funds from the U.S. Department of Education. The opinions expressed herein do not necessarily reflect the views or policies of the Department."

(Authority: Pub. L. 99-591, 100 Stat. 3341-360)

§ 763.32 May funds be used to purchase equipment?

Funds awarded under this program may not be used to purchase equipment.

(Authority: Pub. L. 99-591, Stat. 3341-360)

PART 764—DRUG-FREE SCHOOLS AND COMMUNITIES PROGRAM—TRAINING AND DEMONSTRATION GRANTS TO INSTITUTIONS OF HIGHER EDUCATION, AND FEDERAL ACTIVITIES GRANTS PROGRAM—GENERAL PROVISIONS

Subpart A—General

Sec.
764.1 What is the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program?
764.2 What types of awards does the Secretary make under this program?
764.3 What regulations apply to this program?
764.4 What definitions apply to this program?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

764.20 How does the Secretary evaluate unsolicited applications?
764.21 How does the Secretary ensure distribution and diversity of projects?
764.22 May the Secretary restrict the use of funds for equipment under this program?

Subpart D—What Conditions Must Be Met by a Grantee?

764.30 What must project materials state regarding illicit drug use?

AUTHORITY: 20 U.S.C. 4641 and 4642, unless otherwise noted.

SOURCE: 52 FR 28527, July 30, 1987, unless otherwise noted.

§ 764.1 What is the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program?

This program provides assistance for drug and alcohol abuse education and prevention projects as described in 34 CFR Parts 765 and 766.

(Authority: 20 U.S.C. 4641, 4642)

§ 764.2 What types of awards does th Secretary make under this program?

(a) The Secretary may award grant and cooperative agreements under thi program, depending upon the intended nature of the relationship betwee the recipient and the Department.

(b) The Secretary evaluates applications for cooperative agreements usin the same procedures and criteria a those used to evaluate applications fo grants.

(Authority: 20 U.S.C. 4641, 4642)

§ 764.3 What regulations apply to this program?

(a) Except as provided in paragraph (b) of this section, the following regulations apply to the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in Parts 764, 765, and 766.

(b) The regulations referred to in paragraph (a) of this section do not apply to contracts awarded under this program or to projects carried out directly by the Secretary.

(Authority: 20 U.S.C. 4641, 4642)

§ 764.4 What definitions apply to this program?

(a) *Definitions in the Drug-Free Schools and Communities Act.* The following terms used in these regulations are defined in section 4141 of the Drug-Free Schools and Communities Act:

Drug abuse education and prevention
Consortium (except as used in Part 765)
Illicit drug use
Institution of higher education
State

(b) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Applicant

Application
Award
Budget
Department
EDGAR
Facilities
Fiscal Year
Grant
Local educational agency
Private
Project
Public
Secretary
State educational agency

(c) *Other definitions.* The following definitions also apply:

Act means the Drug-Free Schools and Communities Act of 1986.

Limited enrollment, as used in Part 765, means an enrollment of no more than 500 full- and part-time students.

Consortium, as used in Part 765, means a group of private or public institutions of higher education.

Regional Center means a regional drug abuse education and prevention center authorized by section 4135 of the Act.

(Authority: 20 U.S.C. 4641, 4642, 4661)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 764.20 How does the Secretary evaluate unsolicited applications?

(a) The Secretary may fund an application that was not solicited under an application notice (referred to in this section as an unsolicited application) if—

(1) The application furthers the purposes and objectives of the program;

(2) The applicant meets all requirements for funding under the program;

(3) The application rates high enough to deserve selection based on the selection criteria and any other statutory or regulatory requirements that apply to the program; and

(4) Selection of the application will not have an adverse impact on the amount of funds available under this program.

(b) The Secretary may refuse to consider an unsolicited application that meets a priority established for that fiscal year.

(c) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the FEDERAL REGISTER.

(d) In evaluating an unsolicited application, the Secretary assigns the reserved 15 points under § 765.20(b) and § 766.20(b) to the selection criteria at § 765.21(f) and § 766.21(f) (Contribution to improving the quality of drug and alcohol abuse education and prevention activities) so that the maximum number of possible points for each of these criteria is 40.

(Authority: 20 U.S.C. 4641, 4642)

§ 764.21 How does the Secretary ensure distribution and diversity of projects?

The Secretary may select applications other than those most highly rated for funding if doing so would improve—

(a) The geographic distribution of projects funded;

(b) The diversity of activities or projects funded; or

(c) Under Part 765, equitable participation of private and public institutions of higher education, including community and junior colleges.

(Authority: 20 U.S.C. 4641, 4642)

§ 764.22 May the Secretary restrict the use of funds for equipment under this program?

The Secretary may restrict the amount of funds made available through a grant or cooperative agreement under this program that may be used to purchase equipment.

(Authority: 20 U.S.C. 4641, 4642)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 764.30 What must project materials state regarding illicit drug use?

Any materials produced or distributed with funds made available under the Act must reflect the message that illicit drug use is wrong and harmful.

(Authority: 20 U.S.C. 4664)

PART 765—DRUG FREE SCHOOLS AND COMMUNITIES PROGRAM—TRAINING AND DEMONSTRATION GRANTS TO INSTITUTIONS OF HIGHER EDUCATION

Subpart A—General

Sec.

765.1 What is the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education?

765.2 What parties are eligible for a grant under this program?

765.3 What types of projects does the Secretary assist under this program?

765.4 How does the Secretary establish priorities for this program?

765.5 What regulations apply to this program?

765.6 What definitions apply to this program?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

765.20 How does the Secretary evaluate an application?

765.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met By a Grantee?

765.30 What must a project emphasize?

AUTHORITY: 20 U.S.C. 4641, unless otherwise noted.

SOURCE: 52 FR 28528, July 30, 1987, unless otherwise noted.

Subpart A—General

§ 765.1 What is the Drug-Free Schools and Communities Program—Training and Demonstration Grants To Institutions of Higher Education?

The Drug-Free Schools and Communities Program—Training and Demonstration Grants To Institutions of Higher Education supports grants to institutions of higher education (IHEs) for personnel training and for curriculum demonstrations in drug and alcohol abuse education and prevention.

(Authority: 20 U.S.C. 4641)

§ 765.2 What parties are eligible for a grant under this program?

The Secretary may award grants under this program to IHEs and consortia of IHEs only.

(Authority: 20 U.S.C. 4641)

§ 765.3 What types of projects does the Secretary assist under this program?

The Secretary may fund projects that—

(a) Provide preservice training and instruction of teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(b) Provide inservice training and instruction of teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(c) Provide summer institutes and workshops to instruct teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(d) Carry out research and demonstration programs for teacher training and retraining in drug abuse education and prevention;

(e) Provide training for law enforcement officials, judicial officials, community leaders, parents, and government officials in drug abuse education and prevention; or

(f) Demonstrate model programs, coordinated with local elementary and secondary schools, for the development and implementation of quality drug abuse education curricula.

(Authority: 20 U.S.C. 4641)

§ 765.4 How does the Secretary establish priorities for this program?

(a) The Secretary selects priorities by taking into consideration unmet national needs for drug abuse education and prevention.

(b) The Secretary may select as a priority one or more, or a combination, of the types of projects listed in § 765.3. The Secretary may limit any priority to a particular education level, type of substance abuse, or any combination.

(c) In addition to selecting priorities under paragraph (b) of this section, the Secretary may give priority to projects that—

(1) Implement cooperative programs with local law-enforcement agencies, the courts, and other community resources;

(2) Involve parents, teachers, and school administrators in preventing drug and alcohol use by students, through activities such as educating those parents, teachers, and school administrators about the causes, symptoms, and effects of drug use; or

(3) Are proposed by IHEs with limited enrollments.

(d) In making awards for the types of projects described in § 765.3 (a), (b), and (c), the Secretary may give priority to applications which provide for coordinated and collaborative efforts between SEAs, LEAs, and the Regional Centers.

(e) In making awards for the type of projects described in § 765.3(f), the Secretary gives priority to joint projects involving faculty of IHEs and teachers in elementary and secondary schools and community representatives in the practical application of the findings of educational research and evaluation, and the integration of research into drug abuse education and prevention programs.

(Authority: 20 U.S.C. 4641)

§ 765.5 What regulations apply to this program?

The following regulations apply to the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education:

(a) The regulations in 34 CFR Part 764.

(b) The regulations in 34 CFR Part 765.

(Authority: 20 U.S.C. 4641)

§ 765.6 What definitions apply to this program?

The definitions in 34 CFR 764.4 apply to this part.

(Authority: 20 U.S.C. 4661)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 765.20 How does the Secretary evaluate an application?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the selection criteria in § 765.21.

(b) The Secretary awards up to 100 points for these criteria, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses. .

(d) For each competition, as announced through a notice published in the FEDERAL REGISTER, the Secretary distributes the reserved 15 points among the criteria in § 765.21.

(Approved by the Office of Management and Budget under control number 1850-0605)

(Authority: 20 U.S.C. 4641)

§ 765.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (20 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) For an applicant proposing training, the extent to which the applicant demonstrates familiarity with available training materials; and

(6) For an applicant proposing curriculum development, the complete-

ness of the plan to review and analyze extant materials and information related to drug and alcohol abuse education and prevention in order to avoid duplication, and the extent to which the materials to be developed will be tested and revised as needed.

(b) *Quality of key personnel.* (15 Points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (b)(1) (i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraph (b)(1) of this section, the Secretary considers experience and training in fields related to the objectives of the project, as well as other qualifications that relate to the quality of the project.

(c) *Budget and cost-effectiveness.* (5 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable; and

(3) Enhance the potential for effectively disseminating information and replicating the project.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(e) *Applicant's commitment and capacity.* (10 Points) The Secretary considers the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will continue the project or similar activities when Federal assistance ends.

(f) *Contribution to improving the quality of drug and alcohol abuse education and prevention activities.* (25 Points) The Secretary reviews each application to determine the extent to which the project will contribute to improving the quality of drug and alcohol abuse education and prevention activities. The Secretary considers—

(1) The appropriateness of the means by which the applicant identified the needs to be addressed by the project, and the extent to which the applicant involved school officials, parents, law-enforcement officials, and other community leaders where appropriate in identifying these needs;

(2) The extent to which the project's objectives apply to these needs and incorporate research findings likely to improve the quality of drug and alcohol abuse education and prevention programs;

(3) The extent to which those objectives form the basis of the proposed activities and the extent to which those activities are designed to demonstrate successful techniques for improving the quality of drug and alcohol abuse education and prevention programs;

(4) The extent and magnitude of the benefits likely to be gained by the applicant or by the recipients of services from meeting the project's objectives;

(5) The means by which the project meets the priorities established under § 765.4; and

(6) The likelihood that the project will result in a model or the provision of other information, including evidence of effectiveness, that could be used by others to solve drug and alcohol abuse problems.

(7) The extent of the applicant's plans for disseminating this model or information to others.

(Approved by the Office of Management and Budget under control number 1850-0605)

(Authority: 20 U.S.C. 4641)

Subpart D—What Conditions Must Be Met By a Grantee?

§ 765.30 What must a project emphasize?

A project must emphasize and provide for the maintenance of an orderly, secure, and drug and alcohol free school environment that is conducive to learning, including emphasis on the authority of teachers and school administrators to identify and discipline students who are using or selling drugs and/or alcohol.

(Authority: 20 U.S.C. 4641)

PART 766—DRUG-FREE SCHOOLS AND COMMUNITIES PROGRAM—FEDERAL ACTIVITIES GRANTS PROGRAM

Subpart A—General

Sec.
766.1 What is the Drug-Free Schools and Communities Program— Federal Activities Grants Program?
766.2 What parties are eligible for a grant under this program?
766.3 What types of projects does the Secretary assist under this program?
766.4 How does the Secretary establish priorities for this program?
766.5 What regulations apply to this program?
766.6 What definitions apply to this program?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

766.20 How does the Secretary evaluate an application?
766.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met By a Grantee?

766.30 What must a project emphasize and include?

AUTHORITY: 20 U.S.C. 4642, unless otherwise noted.

SOURCE: 52 FR 28529, July 30, 1987, unless otherwise noted.

Subpart A—General

§ 766.1 What is the Drug-Free Schools and Communities Program—Federal Activities Grants Program?

The Drug-Free Schools and Communities Program—Federal Activities Grants Program supports model development, dissemination, technical assistance, and curriculum development activities for drug and alcohol abuse education and prevention.

(Authority: 20 U.S.C. 4642)

§ 766.2 What parties are eligible for a grant under this program?

The Secretary may award grants under this program to State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), and other nonprofit agencies, organizations, and institutions.

(Authority: 20 U.S.C. 4642)

§ 766.3 What types of projects does the Secretary assist under this program?

The Secretary may fund projects that—

(a) Facilitate the use of appropriate means for communicating to students the dangers of drug use and alcohol abuse, including research on, and development of effective communication programs, and demonstration of programs which effectively communicate the dangers of drug use and alcohol abuse to students;

(b) Develop curriculum materials for drug abuse education and prevention programs in elementary and secondary schools;

(c) Disseminate curriculum materials for drug abuse education and prevention programs in elementary and secondary schools; or

(d) Provide technical assistance to SEAs, LEAs, and intermediate education agencies in the selection and implementation of drug abuse education and prevention curricula, approaches, and programs that address most effectively the needs of the elementary and secondary schools served by these agencies.

(Authority: 20 U.S.C. 4642)

§ 766.4 How does the Secretary establish priorities for this program?

(a) The Secretary selects priorities by taking into account unmet national needs for drug abuse education and prevention programs.

(b) The Secretary may select as a priority one or more, or a combination, of the types of projects listed in

§ 766.3. The Secretary may limit any priority to a particular educational level, type of substance abuse, or any combination of these levels or types.

(c) In addition to selecting priorities under paragraph (b) of this section, the Secretary may give priority to projects that—

(1) Implement cooperative programs with local law enforcement officials, judicial officials, community leaders, and government officials; or

(2) Involve parents and school personnel in preventing drug and alcohol abuse by students, through activities such as educating parents and school personnel about substance abuse and how it may be prevented, detected, and treated.

(Authority: 20 U.S.C. 4642)

§ 766.5 What regulations apply to this program?

The following regulations apply to the Drug-Free Schools and Communities Program—Federal Activities Grants Program:

(a) The regulations in CFR Part 764.

(b) The regulations in CFR Part 766.

(Authority: 20 U.S.C. 4642)

§ 766.6 What definitions apply to this program?

The definitions in 34 CFR 764.4 apply to this program.

(Authority: 20 U.S.C. 4661)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 766.20 How does the Secretary evaluate an application?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the selection criteria in § 766.21.

(b) The Secretary awards up to 100 points for these criteria, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses.

(d) For each competition, as announced through a notice published in the FEDERAL REGISTER, the Secretary distributes the reserved 15 points among the selection criteria in § 766.21.

(Approved by the Office of Management and Budget under control number 1850-0604)

(Authority: 20 U.S.C. 4642)

§ 766.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (20 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective.

(b) *Quality of key personnel.* (15 Points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (b)(1) (i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraph (b)(1) of this section, the Secretary considers experience and training in fields related to the objectives of the project, as well as other qualifications that relate to the quality of the project.

(c) *Budget and cost-effectiveness.* (5 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable; and

(3) Enhance the potential for effectively disseminating information and replicating the project.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(e) *Applicant's commitment and capacity.* (10 Points) The Secretary considers the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will continue the project or similar activities when Federal assistance ends.

(f) *Contribution to improving the quality of drug and alcohol abuse education and prevention activities.* (25 Points) The Secretary reviews each application to determine the extent to which the project will contribute to improving the quality of drug and alcohol abuse education and prevention activities. The Secretary considers—

(1) The appropriateness of the means by which the applicant identified the needs to be addressed by the project, and the extent to which the applicant involved school officials, parents, law-enforcement officials, and other community leaders where applicable in identifying these needs;

(2) The extent to which the project's objectives apply to these needs and incorporate research findings likely to improve the quality of drug and alcohol abuse education and prevention programs;

(3) The extent to which the project's objectives form the basis of the proposed activities and the extent to which those activities are designed to demonstrate successful techniques for improving the quality of drug and alcohol abuse education and prevention programs;

(4) The extent and magnitude of the benefits likely to be gained by the applicant or by the recipients of services from meeting the project's objectives;

(5) The means by which the project meets the priorities established under § 766.4; and

(6) The likelihood that the project will result in a model or other information, including evidence of effectiveness, that could be used by others to solve drug and alcohol abuse problems.

(7) The extent of the applicant's plans for disseminating this model or information to others.

(Approved by the Office of Management and Budget under control number 1850-0604)

(Authority: 20 U.S.C. 4642)

Subpart D—What Conditions Must Be Met By a Grantee?

§ 766.30 What must a project emphasize and include?

(a) A project must emphasize—

(1) The maintenance of an orderly, secure, and drug-free school environment that is conducive to learning, including emphasis on the authority of teachers and school administrators to identify and discipline students using or selling drugs or alcohol or both; and

(2) A firm policy aimed at eliminating the sale or use of drugs and alcohol on school premises, enforcing disciplinary procedures and practices, and teaching students that drug use is both wrong and harmful.

(b) A project must include—

(1) An initial assessment of the current drug and alcohol problem in the school or schools on which the project is to focus, including the number of students who use drugs, the grade level of students who use drugs, and the type of drugs used by the students; and

(2) Procedures for monitoring throughout the project the drug and alcohol problem in that school or schools, including the number of students who use drugs, the grade level of students who use drugs, and the type of drugs used by the students.

(Authority: 20 U.S.C. 4642)

PART 768—THE LIBRARY SERVICES AND CONSTRUCTION ACT FOREIGN LANGUAGE MATERIALS ACQUISITION PROGRAM

Subpart A—General

Sec.
768.1 The Library Services and Construction Act Foreign Language Materials Acquisition Program.
768.2 Who is eligible to apply for a grant under the Foreign Language Materials Program?
768.3 What regulations apply to the Foreign Language Materials Program?
768.4 What definitions apply to the Foreign Language Materials Program?

Subparts B—C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

768.30 How does the Secretary evaluate an application?
768.31 What selection criteria does the Secretary use?

AUTHORITY: 20 U.S.C. 351 *et seq.*, unless otherwise noted.

SOURCE: 50 FR 33175, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 768.1 The Library Services and Construction Act Foreign Language Materials Acquisition Program.

Under the Library Services and Construction Act Foreign Language Materials Acquisition Program—referred to in this part as the Foreign Language Materials Program—the Secretary provides Federal financial assistance for the acquisition of foreign language materials.

(Authority: 20 U.S.C. 371)

§ 768.2 Who is eligible to apply for a grant under the Foreign Language Materials Program?

State public libraries and local public libraries are eligible to apply for grants under the Foreign Language Materials Program.

(Authority: 20 U.S.C. 371)

§ 768.3 What regulations apply to the Foreign Language Materials Program?

The following regulations apply to the Foreign Language Materials Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 768.

(Authority: 20 U.S.C. 371)

§ 768.4 What definitions apply to the Foreign Language Materials Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Library service
Public library
Public library services
State library administrative agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Applicant
Application
Budget
Department
EDGAR
Equipment
Facilities
Grant
Project
Secretary
State
Supplies

(c) *Definitions that apply to this part.* The following definitions also apply to this part:

Act means the Library Services and Construction Act, as amended.

Foreign language materials means library materials for various age levels in a language other than English.

Library materials means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped.

State public library means, for this program, the State library administrative agency.

(Authority: 20 U.S.C. 351 *et seq.*)

[50 FR 33175, Aug. 16, 1985, as amended at 51 FR 18582, May 21, 1986]

Subparts B—C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 768.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 768.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(Authority: 20 U.S.C. 371(b))

§ 768.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost-effective.

(2) The Secretary considers the extent to which—

(i) The budget is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application to determine if the applicant

plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies the applicant plans to use are adequate.

(f) *Need and anticipated benefits.* (20 points)

(1) The Secretary reviews each application to determine the need for the proposed project and the anticipated benefits of the project.

(2) The Secretary considers—

(i) The extent to which the applicant has surveyed or otherwise studied the geographic area for which it provides public library services to determine the need for library materials in a particular foreign language or particular foreign languages;

(ii) The extent to which the applicant has received requests for materials in that language or those languages;

(iii) Whether the proposed project would duplicate in the geographic area other collections of library materials available to the general public in the same foreign language or languages; and

(iv) The benefits likely to be derived by the general public or a particular segment of the public as a result of the proposed project.

(Authority: 20 U.S.C. 371(b))

PART 769—THE LIBRARY SERVICES AND CONSTRUCTION ACT LIBRARY LITERACY PROGRAM

Subpart A—General

Sec.
769.1 The Library Services and Construction Act Library Literacy Program.
769.2 Who is eligible to apply for a grant under the Library Literacy Program?
769.3 What regulations apply to the Library Literacy Program?
769.4 What definitions apply to the Library Literacy Program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

769.10 For what types of projects does the Secretary provide assistance to State public libraries?
769.11 For what types of projects does the Secretary provide assistance to local public libraries?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

769.30 How does the Secretary evaluate an application?
769.31 What selection criteria does the Secretary use?

AUTHORITY: 20 U.S.C. 351 *et seq.*, unless otherwise noted.

SOURCE: 50 FR 33176, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 769.1 The Library Services and Construction Act Library Literacy Program.

Under the Library Services and Construction Act Library Literacy Program—referred to in this part as the Library Literacy Program—the Secretary provides Federal financial assistance for literacy projects.

(Authority: 20 U.S.C. 375(a))

§ 769.2 Who is eligible to apply for a grant under the Library Literacy Program?

State public libraries and local public libraries are eligible to apply for grants under the Library Literacy Program.

(Authority: 20 U.S.C. 375(a))

§ 769.3 What regulations apply to the Library Literacy Program?

The following regulations apply to the Library Literacy Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 769.

(Authority: 20 U.S.C. 375(a))

§ 769.4 What definitions apply to the Library Literacy Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Public Library
State library administrative agency.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Applicant
Application
Budget
Department
EDGAR
Equipment
Facilities
Grant
Project
Secretary
State
Supplies

(c) *Definitions that apply to this part.* The following definitions also apply to this part:

Act means the Library Services and Construction Act, as amended.

Adult means an individual in any State who has exceeded the maximum age for compulsory schooling in that State.

Functionally illiterate adult means an adult whose minimal skills in reading, writing, or comprehension or in performing basic arithmetical computations precludes the individual from functioning in society without assistance from others.

Illiteracy means the inability to read, write, or comprehend or to perform basic arithmetical computations.

Library materials means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped.

Literacy means the ability of an individual to read, write, and comprehend and to perform basic arithmetical computations.

Literacy program means a project or activity designed to help individuals improve their ability to read, write, or comprehend or to perform basic arithmetical computations.

State public library means, for this program, the State library administrative agency.

(Authority: 20 U.S.C. 351 *et seq.*)

[50 FR 33176, Aug. 16, 1985, as amended at 51 FR 18582, May 21, 1986]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 769.10 For what types of projects does the Secretary provide assistance to State public libraries?

(a) The Secretary provides assistance to State public libraries for projects designed to do either or both of the following:

(1) Coordinate and plan library literacy programs.

(2) Arrange for the training of librarians and volunteers to carry out these types of programs.

(b) These projects may include, but are not restricted to, one or more of the following types of activities:

(1) Assisting libraries to provide literacy programs for adults in cooperation with other agencies and organizations, if appropriate.

(2) Providing in-service training for librarians and volunteers in the use of appropriate library materials for illiterate or functionally illiterate adults.

(3) Assisting or training librarians and volunteers in extending library literacy programs to groups and individuals that may not be adequately served by existing programs. Examples of these types of persons include—

(i) The handicapped;

(ii) The institutionalized;

(iii) Older Americans; and

(iv) Other disadvantaged individuals.

(Authority: 20 U.S.C. 357(b))

§ 769.11 For what types of projects does the Secretary provide assistance to local public libraries?

(a) The Secretary provides assistance to local public libraries for projects designed to do one or more of the following:

(1) Promote the use of the voluntary services of individuals, agencies, and organizations in providing literacy programs.

(2) Acquire library materials for literacy programs.

(3) Use library facilities for literacy programs.

(b) These projects may include, but are not restricted to, one or more of the following types of activities:

(1) Promoting the use of volunteers in disseminating information about literacy programs.

(2) Training volunteers to serve local literacy programs.

(3) Acquiring library materials designed to improve the literacy of illiterate and functionally illiterate adults.

(4) Conducting literacy programs for adults.

(5) Encouraging other libraries in the community to volunteer the use of their facilities for literacy programs.

(Authority: 20 U.S.C. 357(c))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 769.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 769.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(Authority: 20 U.S.C. 375(d))

§ 769.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial of ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost-effective.

(2) The Secretary considers the extent to which—

(i) The budget is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the application plans to use are adequate; and

(ii) The equipment and supplies the applicant plans to use are adequate.

(f) *Cooperation and coordination.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to cooperate and coordinate its proposed project with other parties providing similar or related services.

(2) The Secretary considers—

(i) The extent to which the applicant—

(A) Has identified other providers of literacy-related services, including State or local adult education agencies or both, as appropriate;

(B) Has identified the services provided by these parties; and

(C) Has communicated with officials of these parties or their representatives; and

(ii) The specific measures of cooperation and coordination the applicant has proposed.

(Approved by the Office of Management and Budget under control number 1850-0587)

(Authority: 20 U.S.C. 357(d); H. Conf. Rept. No. 98-1075, 98th Cong. 2d Session (1984), p. 21)

[50 FR 33176, Aug. 16, 1985, as amended at 53 FR 49148, Dec. 6, 1988]

PART 770—THE LIBRARY SERVICES AND CONSTRUCTION ACT STATE-ADMINISTERED PROGRAM

Subpart A—General

Sec.

770.1 The Library Services and Construction Act State-Administered Program.
770.2 Who is eligible to apply for a grant under the State-Administered Program?
770.3 What regulations apply to the State-Administered Program?
770.4 What definitions apply to the State-Administered Program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

770.10 What types of projects may be funded under Library Services grants?
770.11 What types of projects may be funded under Public Library Construction grants?
770.12 What types of projects may be funded under Interlibrary Cooperation and Resource Sharing grants?

Subpart C—How Does a State Apply for a Grant?

770.20 What must a State do to receive a grant under the State-Administered Program?
770.21 What must a State plan include?
770.22 What must a State include in a basic State plan?
770.23 What must a State include in a long-range program?
770.24 What must a State include in an annual program?

Subpart D—How Does the Secretary Make a Grant to a State?

770.30 What special conditions does the Secretary apply in considering an application for a grant?

Subpart E—What Conditions Must Be Met by a State and Its Subgrantees?

770.40 What are a State's financial obligations under a Library Services grant?
770.41 What are a State's financial obligations under a Public Library Construction grant?

Sec.
770.42 What other financial obligations does a recipient have under a Public Library Construction grant?
770.43 What administrative costs are allowable under this program?

Subpart F—What Are the Administrative Responsibilities of a State and Its Subgrantees?

770.50 Under what circumstances must a State provide an applicant with an opportunity for a hearing?

AUTHORITY: 20 U.S.C. 351 *et seq.*, unless otherwise noted.

SOURCE: 50 FR 33178, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 770.1 The Library Services and Construction Act State-Administered Program.

Under the Library Services and Construction Act State-Administered Program—referred to in this part as the State-Administered Program—the Secretary provides Federal funds to assist States to—

(a) Extend and improve public library services;

(b) Construct and renovate public libraries; and

(c) Develop and strengthen interlibrary cooperation and resource sharing.

(Authority: 20 U.S.C. 351, 353, 355b, 355e)

§ 770.2 Who is eligible to apply for a grant under the State-Administered Program?

Under the State-Administered Program the following parties are eligible to apply:

(a) States are eligible to apply to the Secretary for—

(1) Library Services grants under title I of the Act;

(2) Public Library Construction grants under title II of the Act; and

(3) Interlibrary Cooperation and Resource Sharing grants under title III of the Act.

(b)(1) Public libraries are eligible to apply to their respective States for subgrants under each type of grant specified in paragraph (a) of this section.

(2) In the case of Interlibrary Cooperation and Resource Sharing grants, a State may also permit other types of libraries to apply for subgrants.

(Authority: 20 U.S.C. 351d, 352, 355a, 355e)

§ 770.3 What regulations apply to the State-Administered Program?

The following regulations apply to the State-Administered Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 770.

(Authority: 20 U.S.C. 351 *et seq.*)

§ 770.4 What definitions apply to the State-Administered Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Annual program
Basic State plan
Indian tribe
Hawaiian native
Library service
Library services for the physically handicapped
Long-range program
Major urban resource library
Public library
Public library services
State Advisory Council on Libraries
State institutional library services
State library administrative agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Acquisition
Applicant
Application
Department
EDGAR
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Public
Secretary
State

Subgrant
Subgrantee

(c) *Definitions that apply to this part.* The following definitions apply to this part:

Act means the Library Services and Construction Act, as amended.

Community information referral center means a center that provides information and makes referrals to link people in need of services to appropriate resources.

Disadvantaged persons means persons whose socio-economic or educational deprivation or whose cultural isolation from the general community may preclude them from benefiting from public library services to the same extent as the general community benefits from these services.

Handicapped means, for purposes of this program, mentally retarded, hearing impaired, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or otherwise health impaired.

Illiteracy means the inability of an individual to read, write, or comprehend or to perform basic arithmetical computations.

Interlibrary cooperation means the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers.

Interlibrary Cooperation and Resource Sharing grants means Federal financial assistance provided by the Secretary under title III of the Act.

Library materials means books, periodicals, newspapers, documents, pamphlets photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped.

Library Services grants means Federal financial assistance provided by the Secretary under title I of the Act.

Limited English-speaking proficiency is defined in section 703(a) of the Bilingual Education act (20 U.S.C. 3223(a)).

Literacy means the ability of an individual to read, write, and comprehend and to perform basic arithmetical computations.

Literacy program means a project or activity designed to help individuals improve their ability to read, write, or comprehend or to perform basic arithmetical computations.

Public Library Construction grants means Federal financial assistance provided by the Secretary under title II of the Act.

(Authority: 20 U.S.C. 351 *et seq.*)

[50 FR 33178, Aug. 16, 1985, as amended at 51 FR 18582, May 21, 1986]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 770.10 What types of projects may be funded under Library Services grants?

(a) The Secretary awards Library Services grants to assist projects designed to plan for, establish, extend, or improve public library services.

(b) The types of projects referred to in paragraph (a) of this section may include, but are not restricted to, the following:

(1) Extending public library services to areas and populations that lack these services.

(2) Improving public library services to ensure that these services are adequate to meet the needs of specific areas and populations.

(3)(i) Making public library services accessible to individuals who, because of a disadvantage, are unable to benefit from public library services regularly made available to the general public.

(ii) These disadvantages include, but are not restricted to, distance, residence, handicap, age, literacy level, and limited English-speaking proficiency.

(4)(i) Improving State and local public library services for—

(A) The elderly; and

(B) Handicapped, institutionalized, and other disadvantaged individuals.

(ii) Services for the elderly may include, but are not restricted to, the following:

(A) Training librarians to work with the elderly.

(B) Conducting special library programs for the elderly, particularly for the elderly who are handicapped.

(C) Purchasing special library materials for use by the elderly.

(D) Paying salaries for elderly persons who work in libraries as assistants on programs for the elderly.

(E) Providing to the elderly home visits by librarians and other library personnel.

(F) Establishing programs to notify the elderly about the availability of library services.

(G) Furnishing transportation to enable the elderly to have access to library services.

(5) Adapting public library services to meet particular needs of individuals.

(6) Assisting libraries to serve as community information referral centers.

(7)(i) Assisting libraries in providing literacy programs for adults and school dropouts.

(ii) If possible and appropriate, applicants shall propose to conduct these literacy programs in cooperation with other agencies and organizations.

(8) Strengthening the capacity of the State library to meet the needs of the people of the State with regard to library services, facilities, and resources.

(9) Supporting and expanding the services of major urban resource libraries that meet the demands of individual users and other libraries.

(10) Establishing, expanding, and operating programs to provide—

(i) State institutional library services;

(ii) Library services to the physically handicapped; and

(iii) Library services for the disadvantaged in urban and rural areas.

(11) Strengthening metropolitan libraries that serve as national or regional resource centers.

(12) Increasing public library services or access to these services through effective use of technology.

(Authority: 20 U.S.C. 351(a), 351a, 351 note (b)(4), 352, 353)

§ 770.11 What types of projects may be funded under Public Library Construction grants?

(a) The Secretary awards Public Library Construction grants to assist projects designed to carry out the activities in paragraphs (b) and (c) of this section.

(b) As used in this part, "construction" includes the following:

(1) Construction of new buildings.

(2) Acquisition, expansion, remodeling, or alteration of existing buildings.

(3)(i) Initial equipment for any building referred to in paragraphs (b)(1) and (b)(2) of this section.

(ii) As used in paragraph (b)(3)(i) of this section, "equipment" includes the following:

(A) Machinery.

(B) Utilities.

(C) Built-in equipment.

(D) Enclosures or structures necessary to house the types of items listed in paragraphs (b)(3)(ii) (A) through (C) of this section.

(E) All other items necessary for the functioning of a particular facility as a facility for the provision of library services.

(4) Within public libraries, construction of spaces that—

(i) Provide shelter from nuclear fallout; and

(ii) Are constructed at a nominal cost as part of a larger project.

(5) Any combination of activities referred to in paragraphs (b)(1) through (b)(4) of this section (including architect's fees and the cost of acquisition of land).

(c) As used in this part, "remodeling" includes the following:

(1) Remodeling to meet the standards of the Architectural Barriers Act of 1968.

(2) Remodeling designed to conserve energy.

(3) Renovation or remodeling to accommodate new technologies.

(4) Purchase of existing historic buildings for conversion to public libraries.

(Authority: 20 U.S.C. 351a(2), 355a, 355c; EO 11490, as amended)

§ 770.12 What types of projects may be funded under Interlibrary Cooperation and Resource Sharing grants?

(a) The Secretary awards Interlibrary Cooperation and Resource Sharing grants to assist projects designed to enable various types of libraries to share resources and materials.

(b) These types of projects include only the following:

(1)(i) Planning for, and taking other steps leading to the development of, cooperative library networks.

(ii) Planning may include—

(A) Development of a statewide resource sharing plan directed toward eventual compliance with section 304 of the Act; or

(B) One or more of the items listed in section 304(c) of the Act.

(2)(i) Establishing, expanding, or operating local, regional, or interstate cooperative library networks.

(ii) As used in paragraph (b)(2)(i) of this section, "cooperative library networks" are those networks designed to—

(A) Provide for the systematic and effective coordination of the resources of various types of libraries, including school, public, academic, and special libraries and information centers; and

(B) Improve supplementary services for the special clientele served by these types of libraries.

(Authority: 20 U.S.C. 351(a), 355e, 355e-1(a), 355e-2)

Subpart C—How Does a State Apply for a Grant?

§ 770.20 What must a State do to receive a grant under the State-Administered Program?

(a) In order to receive a grant under the State-Administered Program, a State must—

(1) Establish a State Advisory Council on Libraries; and

(2) After consulting with the council, submit to the Secretary by the various dates established by the Secretary the three parts of a State plan, as described in § 770.21.

(b) The Secretary does not consider the other parts of the plan until the Secretary has approved the basic State plan.

(Authority: 20 U.S.C. 351d(a))

§ 770.21 What must a State plan include?

A State plan must consist of the following three parts:

(a)(1) A basic State plan, as described in § 770.22, covering a five-year period.

(2) The State shall submit one basic plan to cover all three types of grants provided under this program:

(i) Library Services grants.

(ii) Public Library Construction grants.

(iii) Interlibrary Cooperation and Resource Sharing grants.

(b) (1) A long-range program, as described in § 770.23, covering a period of not fewer than three years and not more than five years.

(2) The State library administrative agency shall develop the long-range program—

(i) With the advice and assistance of the State Advisory Council on Libraries; and

(ii) In consultation with the Secretary.

(3) The State shall—

(i) Submit a long-range program that provides a comprehensive description of the State's identified library needs and a description of the activities to be taken toward meeting those needs supported with the assistance of the LSCA State-Administered Program;

(ii) Review the program each year;

(iii) Revise the program each year according to changing needs and the results of evaluations and surveys; and

(iv) Submit the revised program to the Secretary.

(c) An annual program, as described in § 770.24, for each type of grant for which the State is applying.

(Authority: 20 U.S.C. 351d(a))

§ 770.22 What must a State include in a basic State plan?

A State shall include the following in its basic State plan:

(a) Assurance that the State library administrative agency—

(1) Will administer or supervise the administration of all programs and projects in the State assisted under the State-Administered Program;

(2) Has the fiscal and legal authority and capability to administer or supervise the administration of programs and projects assisted under the State-Administered Program;

(3) Has established or will establish policies, priorities, criteria, and procedures necessary to implement the program in the State;

(4) (i) Will make the reports the Secretary reasonably requires to—

(A) Carry out the Secretary's functions under the program; and

(B) Determine the extent to which funds provided under the program have been effective in carrying out the purposes of the program;

(ii) Will include in these reports, if requested by the Secretary, reports of evaluations made under the State plan; and

(iii) Will make the reports in the form and containing the information reasonably required by the Secretary; and

(5) (i) Will keep the records the Secretary finds necessary to assure the correctness and verification of the reports referred to in paragraph (a) (4) of this section; and

(ii) Will give the Secretary access to the records as the Secretary finds necessary.

(b) Assurances that—

(1) Any funds paid to the State under a long-range program and an annual program will be expended only for the purposes for which the funds have been authorized and appropriated; and

(2) The State has adopted the necessary fiscal control and fund accounting procedures to assure proper disbursement of, and to account for, Federal funds paid—

(i) To the State under the State-Administered Program; and

(ii) By the State to any other agency under the program.

(c) An assurance that the State will give priority to programs and projects designed to carry out the following objectives:

(1) To improve access to public library resources and services for the least served populations in the State, including—

(i) Projects for individuals with limited English—speaking proficiency,

(ii) Projects for individuals who are handicapped; and

(iii) Projects in urban and rural areas.

(2) To serve the elderly.

(3) To combat illiteracy.

(4) To increase library services and access to services through effective use of technology.

(Approved by the Office of Management and Budget under control number 1850-0528)

(Authority: 20 U.S.C. 351a(11), 351d(b))

§ 770.23 What must a State include in a long-range program?

(a) A State shall include the following in a long-range program:

(1) A comprehensive description of the State's identified present and projected library needs.

(2) A plan for meeting those identified needs with Federal funds made available through the appropriate type of grant under the State-Administered Program.

(3) (i) The State's policies, priorities, criteria, and procedures for administering this type of grant and appropriate subgrants under the State-Administered Program.

(ii) A description of how the State plans to implement the priorities in § 770.22(c).

(4) A description of the State's policies and procedures regarding each of the following:

(i) The periodic evaluation of the effectiveness of projects supported under this type of grant.

(ii) The appropriate dissemination of—

(A) The results of the evaluation referred to in paragraph (a)(4)(i) of this section; and

(B) Other information pertaining to these projects.

(iii) The coordination of projects assisted under this type of grant with similar library programs and projects operated by other libraries, institutions, and agencies in the State.

(b) In the case of an application for a Public Library Construction grant, the State shall also include in its long-range program the policies and procedures to be followed by the State library administrative agency in providing an opportunity for a hearing to a local or other public agency whose application for a subgrant is denied.

(c) In the case of an application for an Interlibrary Cooperation and Resource Sharing grant, the State shall also include the following in its long-range program:

(1) (i) A statewide resource sharing plan directed toward eventual compliance with the provisions of section 304 of the Act.

(ii) In developing the plan, the State library agency, with the assistance of the State Advisory Council on Libraries, shall consider recommendations from current and potential participating institutions in interlibrary cooperation and resource sharing projects authorized under the Act.

(2) (i) An identification of interlibrary cooperation and resource sharing objectives to be achieved during the period covered by the basic State plan and the long-range program.

(ii) These objectives may include, but are not restricted to, one or more of the items listed in section 304(c) of the Act.

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(Authority: 20 U.S.C. 351(a), 351a(12), 355c, 351d(a)(d); 355e, 355e-2, 355e-3)

§ 770.24 What must a State include in an annual program?

(a) A State shall include the following in an annual program:

(1) A description of the projects and activities the State plans to carry out—and the basis upon which the State plans to award subgrants—during the specified year with regard to library services, public library construction, or interlibrary cooperation and resource sharing, as appropriate.

(2) A description of how these projects and activities would—

(i) Be consistent with purposes specified in the Act and in §§ 770.10, 770.11, or 770.12, as appropriate;

(ii) Fulfill the objectives of the State's long-range program or the update of the long-range program; and

(iii) Meet the needs identified by the State in the long-range program.

(3) A description of the criteria the State plans to use in allocating funds.

(4) (i) A demonstration that the manner in which the State proposes to carry out the annual program is consistent with the policies, criteria, priorities, and procedures specified in the long-range program or the update of the long-range program.

(ii) In meeting this requirement, the State shall address, among other items, policies and procedures regarding evaluations, dissemination, and coordination, as described in § 770.23(a)(4).

(5) A description of how proposed projects and activities are to be based on the results of evaluations undertaken according to the long-range program.

(6) A demonstration that proposed projects and activities would meet the assurance given by the State in its basic State plan to implement the priorities specified in § 770.22(c), if appropriate.

(7) The amount of Federal funds the State plans to spend to carry out its administrative functions under the grant, as specified in § 770.43.

(b) In the case of an application for a Library Services grant, the State shall also include the following in its annual program:

(1) The criteria the State plans to use to ensure that the State meets the financial obligations specified in § 770.40(c).

(2) A description of how the State plans to allocate funds to support and expand library services of major urban resource libraries if—

(i) The sum appropriated for the year (excluding the amount made available for Indian tribes and Hawaiian natives) exceeds the amount specified in section 102(c)(1) of the Act; and

(ii) The State has one or more cities with populations of at least 100,000 individuals.

(3) A description of how the State plans to use funds for projects and activities for the elderly.

(4) A description of how the State plans to use funds to make library services more accessible to handicapped persons.

(5) (i) To enable the Secretary to make a determination of payment under section 7(a) of the Act (Payments), a statement of the amounts

the State will have available for expenditure for the proposed projects and activities during the period covered by the annual program from—

(A) State sources; and

(B) Local sources.

(ii) The State may not include in-kind contributions among the amounts the State declares it will have available for expenditure under paragraph (b)(5)(i) of this section.

(c) In the case of an application for a Public Library Construction grant, the State shall also include in its annual program a description of how the State plans to use funds that year, consistent with the long-range program, for approved construction projects in areas of the State lacking the library facilities necessary to provide adequate library services.

(d) In the case of an application for an Interlibrary Cooperation and Resource Sharing grant, the State shall also include in its annual program a description of how the proposed projects and activities would meet the requirements of the Act and of § 770.23(c) with respect to—

(1) The statewide resource sharing plan; and

(2) The interlibrary cooperation and resource sharing objectives identified in the long-range program.

(Approved by the Office of Management and Budget under control number 1850-0528)

(Authority: 20 U.S.C. 351, 351a(13), 351d(a), (b)(4); 351e(a)(1), 354, 355c, 355e-2, 355e-3)

[50 FR 33178, Aug. 16, 1985, as amended at 51 FR 18582, May 21, 1986]

Subpart D—How Does the Secretary Make a Grant to a State?

§ 770.30 What special conditions does the Secretary apply in considering an application for a grant?

(a) The Secretary considers an applicant's long-range program and annual program for a grant under this part only if the Secretary has approved the applicant's basic State plan.

(b)(1) In the case of an application for a Library Services grant, the Secretary makes a grant to a State only if the Secretary has determined that the State will have the following amounts available for expenditure for the projects and activities proposed in its annual program during the period covered by the annual program:

(i) From combined State and local sources an amount—

(A) Sufficient to enable the State to receive not less than its minimum allotment under the Act; and

(B) Not less than the total amount actually expended from State and local sources for services provided under a Library Services grant during the second year preceding the year covered by the annual program.

(ii) From State sources an amount not less than the total amount actually expended from State sources for services provided under a Library Services grant during the second year preceding the year covered by the annual program.

(2) The requirements in paragraph (b)(1) of this section do not apply to an application from the Trust Territory of the Pacific Islands.

(Authority: 20 U.S.C. 351e, 354, 355c, 355e-2)

Subpart E—What Conditions Must Be Met by a State and Its Subgrantees?

§ 770.40 What are a State's financial obligations under a Library Services grant?

A State that receives a Library Services grant shall meet the following financial obligations:

(a) The State shall meet the maintenance-of-effort requirement in § 770.30(b).

(b) The State shall provide the difference between—

(1) The cost of carrying out the State's annual program; and

(2) The Federal share of these costs, as specified in section 7(b) of the Act.

(c) (1) For State institutional library services, and library services to the physically handicapped and institutionalized individuals, the State shall spend from Federal, State, and local sources an amount not less than the amount the State spent from those sources for those services during the second year preceding the year for which the Secretary makes the grant.

(2) If the Federal allocation for the State's Library Services grant is reduced, the Secretary informs the State that the amount the State is required to spend under paragraph (c)(1) of this section is ratably reduced.

(d) If the amount of the grant (excluding the amount made available for Indian tribes and Hawaiian natives) obligates the State to allocate funds to support and expand library services of major urban resource libraries (see sections 102(a) (3) and (c) of the Act and § 770.24(b)(2)), the State may not reduce the amount it pays to an urban resource library below the amount the State paid to that library in the preceding year.

(Authority: 20 U.S.C. 351e; 353; 354)

[50 FR 33178, Aug. 16, 1985, as amended at 51 FR 18582, May 21, 1986]

§ 770.41 What are a State's financial obligations under a Public Library Construction grant?

(a) A State that receives a Public Library Construction grant shall provide, from State or local sources or both, the difference between—

(1) The costs of projects financed under the grant for that year; and

(2) The Federal share of these costs, as specified in section 7(b) of the Act.

(b) In case of any individual project under a Public Library Construction grant, at least one half of the total cost must be supplied by State or local sources or both.

(Authority: 20 U.S.C. 351e(b), 355b(b))

§ 770.42 What other financial obligation does a recipient have under a Public Library Construction grant?

(a) Unless released from the obligation by the terms of paragraph (c) of this section, a recipient of Federal financial assistance under a Public Library Construction grant—or the recipient's successor in title or possession—shall repay to the United States on request an amount as specified in paragraph (b) of this section if, within 20 years of the completion of construction of the library facility—or part of a facility—for which the assistance was received—

(1) The recipient or its successor ceases or fails to be a public or nonprofit institution; or

(2) The facility ceases to be used as a library facility.

(b) The amount the recipient or its successor may be obligated to repay is an amount that equals—

(1) The value of the facility or part of the facility at the time of the occurrence specified in paragraph (a)(1) or (a)(2) of this section; multiplied by

(2) The ratio of—

(i) The amount of the Federal assistance under the grant or subgrant; to

(ii) The cost of the facility or part of the facility for which the assistance was received.

Example. In 1974 a local public library completed a project to enlarge its reading room. The project had been assisted by a subgrant from the State under a Public Library Construction grant. The total cost of the project was $300,000; the subgrant had amounted to $120,000 a ratio of 2 to 5 or 40 percent of the cost.

In 1986 the local library moves to another district, and the facility for which it received assistance in 1974 ceases to be used as a library facility. It is determined that the part of the facility for which assistance was received has a current market value of $400,000.

The United States is entitled to recover from the local public library an amount equal to 40 percent of the current market value of the facility or portion of the facility assisted with Federal funds; that is, 40 percent of $400,000 or $160,000.

(c) The Secretary may decide, for good cause, to release the recipient from its obligation under paragraph (a) of this section.

(d) The provisions of this section apply to any facility constructed at any time with assistance under Title II of the Library Services and Construction Act.

(Authority: 20 U.S.C. 355b)

§ 770.43 What administrative costs are allowable under this program?

(a) A State library administrative agency may spend funds received under a Library Services grant and funds received under a Public Library Construction grant to carry out its administrative functions under a Library Services grant, a Public Library Construction grant, and an Interlibrary Cooperation and Resource Sharing grant.

(b) The total amount the agency may spend to carry out its administrative functions under all three of these grants during any fiscal year may not exceed the greater of—

(1) Six percent of the sum of the amounts allotted to that State under Titles I, II, and III for such fiscal year; or

(2) $60,000.

(c) The agency may spend funds received under Titles I and II of the Act for administrative costs in connection with the following activities:

(1) Administration of the State plan, including obtaining the services of consultants.

(2) Statewide planning for and evaluation of library services.

(3) Dissemination of information concerning library services.

(4) Activities of the State Advisory Council on Libraries and of any other advisory groups and panels necessary to assist the State library administrative agency in carrying out its functions.

(Authority: 20 U.S.C. 351f, 353(b))

[50 FR 33178, Aug. 16, 1985, as amended at 51 FR 18583, May 21, 1986]

Subpart F—What Are the Administrative Responsibilities of a State and Its Subgrantees?

§ 770.50 Under what circumstance must a State provide an applicant with an opportunity for a hearing?

(a)(1) In the case of a Public Library Construction grant, if a State denies funds to a local or other public agency that applies for a subgrant for construction of public library facilities, the State library administrative agency shall give the local or other public agency an opportunity for a hearing.

(2) The provision in 34 CFR 76.401(b) (which exempts State agencies from having to offer an opportunity for a hearing under certain State-administered programs) does not apply to Public Library Construction grants.

(b) In providing opportunity for a hearing, the State library administrative agency shall follow the appropriate policies and procedures included in the State's long-range program for the Public Library Construction grant.

(Authority: 20 U.S.C. 355c)

PART 771—THE LIBRARY SERVICES AND CONSTRUCTION ACT BASIC GRANTS TO INDIAN TRIBES AND HAWAIIAN NATIVES PROGRAM

Subpart A—General

Sec.
771.1 The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program.
771.2 Who is eligible to apply for a grant under the Basic Grants to Indian Tribes and Hawaiian Natives Program?
771.3 What regulations apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?
771.4 What definitions apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

771.10 What types of projects may be funded under this program?

Subpart C—How Does One Apply for a Grant?

771.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a basic grant?

Subpart D—How Does the Secretary Make an Award?

771.30 What factors does the Secretary consider in making an award?

Subpart E—What Conditions Must Be Met by a Grantee?

771.40 What are the financial obligations of a grantee that supports a public library system?

Authority: 20 U.S.C. 351 *et seq.*, unless otherwise noted.

Source: 50 FR 33183, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 771.1 The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program.

Under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program—referred to in this part as the Basic Grants to Indian Tribes and Hawaiian Natives Program—the Secretary provides Federal financial assistance to establish or improve public library services for Indians residing on or near reservations, for Indian tribes and Indians in Oklahoma, California and Alaska, and for Hawaiian natives.

(Authority: 20 U.S.C. 351; 351c (c)(1), (d); 361(c); 366)

[51 FR 18583, May 21, 1986]

§ 771.2 Who is eligible to apply for a grant under the Basic Grants to Indian Tribes and Hawaiian Natives Program?

The following are eligible to apply for grants under the Basic Grants to Indian Tribes and Hawaiian Natives Program:

(a) Indian tribes, as defined in § 771.4(b).

(b) Organizations—

(1) Primarily serving and representing Hawaiian natives; and

(2) Recognized by the Governor of the State of Hawaii.

(Authority: 20 U.S.C. 351, 351a (15), (16); 351c(d)(1), 361)

§ 771.3 What regulations apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?

(a) The following regulations apply to an Indian tribe or an organization primarily serving and representing Hawaiian natives that applies for a grant under the Basic Grants to Indian Tribes and Hawaiian Natives Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 771.

(b) An organization primarily serving and representing Hawaiian natives that applies for a grant under this part is also subject to 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 351 *et seq.*)

§ 771.4 What definitions apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?

The following definitions apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Contract
Department
EDGAR
Grant
Grantee
Project
Public
Secretary

(b) *Definitions that apply to this part.* The following definitions also apply to this part:

Act means the Library Services and Construction Act, as amended.

Hawaiian native means an individual having an ancestor, who prior to 1778, was a native in the area that now comprises the State of Hawaii.

Indian tribes.

(1) This term means an Indian tribe, band, nation, or other organized group or community recognized by the Secretary of the Interior to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) The term includes an Alaskan Native village or regional or village corporation as defined in or established under the Alaskan Native Claims Settlement Act.

Library materials.

(1) This term means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped.

(2) (i) The term also includes restricted collections of cultural materials of Indian tribes or Hawaiian natives, as appropriate.

(ii) *Restricted collection* means library materials not placed in general circulation.

(Authority: 20 U.S.C. 351a, 362(c))

Library service means the performance of all activities of a library relating to—

(1) The collection and organization of library materials; and

(2) Making the materials and information of a library available to users.

Public library.

(1) This term means a library that—

(i) Serves free of charge all residents of a community, district, or region; and

(ii) Receives its financial support in whole or in part from public funds.

(2) The term also includes a research library; that is, a library that—

(i) Makes its services available to the public free of charge;

(ii) Has extensive collections of books, manuscripts, and other materials that are—

(A) Suitable for scholarly research; and

(B) Not available to the public through public libraries;

(iii) Disseminates humanistic knowledge through services to readers, fellowships, educational and cultural programs, publication of significant research, and other activities; and

(iv) Is not an integral part of an institution of higher education.

Public library services means library services furnished by a public library free of charge.

(Authority: 20 U.S.C. 351 *et seq.*)

[50 FR 33183, Aug. 16, 1985, as amended at 51 FR 18583, May 21, 1986]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 771.10 What types of projects may be funded under this program?

(a) The Secretary provides Federal financial assistance under this program to Indian tribes and Hawaiian native organizations to conduct one or more of the following projects:

(1) Assessment of tribal or Hawaiian native library needs.

(2) In-service or preservice training of Indians or Hawaiian natives as library personnel.

(3) Salaries of library personnel.

(4) Purchase of library materials.

(5) Dissemination of information about library services.

(6) Transportation to enable Indians or Hawaiian natives to have access to library services.

(7) Conduct of special library programs for Indians or Hawaiian natives.

(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (b) and (c) of this section.

(9) Contracts to—

(i) Provide public library services to Indians living on or near reservations, to Indian tribes or Indians in Oklahoma, California, or Alaska, or to Hawaiian natives; or

(ii) Carry out any of the projects listed in paragraphs (a)(1) through (a)(8) of this section.

(b) As used in paragraph (a)(8) of this section, "construction" includes the following:

(1) Construction of new buildings.

(2) Acquisition, expansion, remodeling, or alteration of existing buildings.

(3)(i) Initial equipment for any building referred to in paragraphs (b)(1) and (b)(2) of this section.

(ii) As used in paragraph (b)(3)(i) of this section, equipment includes the following:

(A) Machinery.

(B) Utilities.

(C) Built-in equipment.

(D) Enclosures of structures necessary to house the types of items listed in paragraphs (b)(3)(ii) (A) through (C) of this section.

(E) All other items necessary for the functioning of a particular facility as a facility for the provision of library services.

(4) Within public libraries, construction of spaces that—

(i) Provide shelter from nuclear fallout; and

(ii) Are constructed at a nominal cost as part of a larger project.

(5) Any combination of activities re- erred to in paragraph (b)(1) through b)(4) of this section (including archi- ect's fees and the cost of acquisition f land).

(c) As used in this part, "remodel- ng" includes the following:

(1) Remodeling to meet the stand- rds of the Architectural Barriers Act f 1968.

(2) Remodeling designed to conserve nergy.

(3) Renovation or remodeling to ac- ommodate new technologies.

(4) Purchase of existing historic uildings for conversion to public li- raries.

Authority: 20 U.S.C. 351a(2); 351c(d)(2); 62; 366)

51 FR 18583, May 21, 1986]

ubpart C—How Does One Apply for a Grant?

771.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a basic grant?

To be considered for a basic grant nder this program, an Indian tribe or n organization primarily serving and epresenting Hawaiian natives must ubmit to the Secretary an application ontaining the following:

(a) Information showing that the ap- licant is—

(1) An Indian tribe, as defined in 771.4(b); or

(2) An organization primarily serv- ng and representing Hawaiian natives nd recognized by the Governor of the tate of Hawaii.

(b) A description of the project or rojects—from among those listed in 771.10(a)—the applicant proposes to onduct under its grant.

(c) A description of how the pro- osed project is likely to establish or mprove public library services for—

(1) Indians living on or near a reser- ation;

(2) Indian tribes or Indians in Okla- oma, California or Alaska; or

(3) Hawaiian natives.

(d) In the case of an Indian tribe or awaiian native organization that sup- orts a public library system, an assur- nce that the grantee will expend from Federal, State, and local sources an amount sufficient to meet the maintenance-of-effort requirement in § 771.40.

(Approved by the Office of Management and Budget under control number 1850-0568)

(Authority: 20 U.S.C. 351d(g)(1); 361; 362(b); 363; 366)

[50 FR 33183, Aug. 16, 1985, as amended at 51 FR 18583, May 21, 1986]

Subpart D—How Does the Secretary Make an Award?

§ 771.30 What factors does the Secretary consider in making an award?

The Secretary awards a basic grant to an applicant if—

(a) The applicant meets the requirements of eligibility in § 771.2; and

(b) The Secretary determines that the application meets the requirements at § 771.20.

(Approved by the Office of Management and Budget under control number 1850-0568)

(Authority: 20 U.S.C. 351c (c)(1), (d)(1), (d)(2); 351d(g)(1), 361(c), 363)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 771.40 What are the financial obligations of a grantee that supports a public library system?

If an Indian tribe or Hawiian native organization that receives a grant under this program supports a public library system, the grantee shall expend from Federal, State, and local sources for public library services an amount not less than the amount the grantee expended from those sources for public library services during the second year preceding the year for which the Secretary has approved a grant to the grantee under this program.

(Authority: 20 U.S.C. 351c(d)(2); 362(b))

[51 FR 18584, May 21, 1986]

PART 772—THE LIBRARY SERVICES AND CONSTRUCTION ACT SPECIAL PROJECTS GRANTS TO INDIAN TRIBES AND HAWAIIAN NATIVES PROGRAM

Subpart A—General

Sec.

772.1 The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program.
772.2 Who is eligible to apply for a grant under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?
772.3 What regulations apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?
772.4 What definitions apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

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772.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a special projects grant?

Subpart D—How Does the Secretary Make an Award?

772.30 How does the Secretary evaluate an application?
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Subpart E—What Conditions Must Be Met by a Grantee?

772.40 What are the financial obligations of a grantee?
772.41 What are the additional financial obligations of a grantee that supports a public library system?

Subpart F—What Are the Administrative Responsibilities of a Grantee?

772.50 Who must administer funds under a special projects grant to an Indian tribe?

AUTHORITY: 20 U.S.C. 351 *et seq.*, unless otherwise noted.

SOURCE: 50 FR 33185, Aug. 16, 1985, unless otherwise noted.

Subpart A—General

§ 772.1 The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program.

Under the Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program—referred to in this part as the Special Projects Grants to Indian Tribes and Hawaiian Natives Program—the Secretary provides Federal financial assistance to establish or improve public library services for Indians residing on or near reservations for Indian tribes and Indians living in Oklahoma, California and Alaska, and for Hawaiian natives.

(Authority: 20 U.S.C. 351; 351c (c)(2), (d); 361(d); 366)

[51 FR 18584, May 21, 1986]

§ 772.2 Who is eligible to apply for a grant under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

The following are eligible to apply for grants under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program:

(a) Indian tribes, as defined in 34 CFR 771.4(b), that have received grants under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program (34 CFR Part 771).

(b) Organizations that—

(1) Primarily serve and represent Hawaiian natives;

(2) Are recognized by the Governor of the State of Hawaii; and

(3) Have received grants under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program (34 CFR Part 771).

(Authority: 20 U.S.C. 351, 351a, 351c (c)(2), (d)(1), (d)(2); 361(d))

§ 772.3 What regulations apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

(a) The following regulations apply to an Indian tribe or an organization primarily serving and representing Hawaiian natives that applies for a grant under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in 34 CFR Part 771, as appropriate.

(3) The regulations in this Part 772.

(b) An organization primarily serving and representing Hawaiian natives that applies for a grant under this part is also subject to 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 351 *et seq.*)

§ 772.4 What definitions apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

The following definitions apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program:

(a) *Definitions in EDGAR*. The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Budget
Contract
Department
EDGAR
Equipment
Facilities
Grant
Grantee
Project
Public
Secretary
Supplies

(b) *Definitions in 34 CFR Part 771*. The following terms used in this part are defined in 34 CFR 771.4(b) (the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program):

Act
Hawaiian native
Indian tribe
Library materials, including restricted collections of cultural materials
Library service
Public library
Public library services

(c) *Definition that applies to this part*. The following definition also applies to this part:

Librarian means an individual with training or experience in providing or managing library services.

(Authority: 20 U.S.C. 351, 351a, 362c)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 772.10 What types of projects may be funded under this program?

(a) The Secretary provides Federal financial assistance under this program to Indian tribes and Hawaiian native organizations to conduct one or more of the following projects:

(1) Assessment of tribal or Hawaiian native library needs.

(2) In-service or preservice training of Indians or Hawaiian natives as library personnel.

(3) Salaries of library personnel.

(4) Purchase of library materials.

(5) Dissemination of information about library services.

(6) Transportation to enable Indians or Hawaiian natives to have access to library services.

(7) Conduct of special library programs for Indians or Hawaiian natives.

(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (b) and (c) of this section.

(9) Contracts to—

(i) Provide public library services to Indians living on or near reservations, to Indian tribes or Indians in Oklahoma, California, or Alaska, or to Hawaiian natives; or

(ii) Carry out any of the projects listed in paragraphs (a)(1) through (a)(8) of this section.

(b) As used in paragraph (a)(8) of this section, "construction" includes the following:

(1) Construction of new buildings.

(2) Acquisition, expansion, remodeling, or alteration of existing buildings.

(3)(i) Initial equipment for any building referred to in paragraphs (b)(1) and (b)(2) of this section.

(ii) As used in paragraph (b)(3)(i) of this section, "equipment" includes the following:

(A) Machinery.

(B) Utilities.

(C) Built-in equipment.

(D) Enclosures or structures necessary to house the types of items listed in paragraphs (b)(3)(ii) (A) through (C) of this section.

(E) All other items necessary for the functioning of a particular facility as a facility for the provision of library services.

(4) Within public libraries, construction of spaces that—

(i) Provide shelter from nuclear fallout; and

(ii) Are constructed at a nominal cost as part of a larger project.

(5) Any combination of activities referred to in paragraphs (b)(1) through (b)(4) of this section (including architect's fees and the cost of acquisition of land).

(d) As used in this part, "remodeling" includes the following:

(1) Remodeling to meet the standards of the Architectural Barriers Act of 1968.

(2) Remodeling designed to conserve energy.

(3) Renovation or remodeling to accommodate new technologies.

(4) Purchase of existing historic buildings for conversion to public libraries.

(Authority: 20 U.S.C. 351a(2); 351c(c)(2), (d)(2); 361(d); 362; 366, EO 11490, as amended)

[51 FR 18584, May 21, 1986]

Subpart C—How Does One Apply for a Grant?

§ 772.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a special projects grant?

(a) To be considered for a special projects grant under this program, an Indian tribe or an organization primarily serving and representing Hawaiian natives must submit to the Secretary—

(1) A plan for the year for which the applicant is seeking Federal financial assistance; and

(2)(i) A long-range program; or

(ii) If the tribe or organization has a long-range program on file with the Secretary in conjunction with a grant under this program, an update, if necessary, of that long-range program.

(b)(1) The Secretary regards the plan as an application for Federal financial assistance under Subpart D of this part.

(2) The project or projects the applicant proposes to carry out in its plan must be from among those listed in § 772.10(a).

(c) The long-range program must be a comprehensive program that—

(1) Covers a period of not fewer than three years and not more than five years;

(2) Contains a clear and concise description of objectives; and

(3) Includes the following:

(i) Identification of the need for public library services by—

(A) Indians living on or near a reservation or Indians in Oklahoma, California or Alaska; or

(B) Hawaiian natives.

(ii) Identification of the specific service or services needed.

(iii)(A) A description of the project or projects to be undertaken toward meeting those specifically identified needs with assistance under this program.

(B) The project or projects must be from among those listed in § 772.10(a).

(Approved by the Office of Management and Budget under control number 1850-0565)

(Authority: U.S.C. 351c(c)(2), (d)(2); 351d(g)(2); 361; 362; 364; 366)

[50 FR 33185, Aug. 16, 1985, as amended at 51 FR 18584, May 21, 1986]

Subpart D—How Does the Secretary Make an Award?

§ 772.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 772.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(Authority: 20 U.S.C. 351c (c)(2), (d)(2); 351d(g)(2), 361(d), 364)

§ 772.31 What selection critieria does the Secretary use?

(a) *Plan of operation.* (15 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost-effective.

(2) The Secretary considers the extent to which—

(i) The budget is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan. (5 points)*

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies the applicant plans to use are adequate.

(f) *Need.* (20 points)

(1) The Secretary reviews each application to determine the need for the applicant to carry out the proposed public library services from among the projects listed in § 772.10(a).

(2) In making this determination the Secretary considers—

(i) The needs to be addressed by the project, including the extent and severity of these needs as indicated by the number or percentage of individuals in the area to be served by the project who require the proposed library services;

(ii) A description of other library services in the area—including any offered by the applicant—that are designed to meet the same needs as those to be addressed by the project;

(iii) Evidence that these other library services are insufficient in quantity or quality or both, or an explanation of why they are not used by individuals who require the proposed public library services; and

(iv) A description of how the project is likely to meet these needs by establishing or improving public library services for—

(A) Indians living on or near a reservation or Indians in Oklahoma, California, or Alaska; or

(B) Hawaiian natives.

(g) *Consistency with long-range program.* (20 points)

(1) The Secretary reviews each application to determine the consistency of the project with the applicant's long-range program submitted under § 772.20.

(2) The Secretary considers—

(i) How the project is designed to help meet one or more of the specific needs identified in the long-range program; and

(ii) The extent to which the project is likely to meet one or more of the long-range objectives described in the program.

(h) *Community involvement.* (10 points)

(1) The Secretary reviews each application to determine the extent to which the individuals to be served and other members of the community are involved in the project.

(2) The Secretary considers the extent to which individuals to be served and other members of the community—

(i) Were involved in planning and developing the project; and

(ii) Will be involved in operating and evaluating the project.

(Approved by the Office of Management and Budget under control number 1850-0565)

(Authority: 20 U.S.C. 351c(c)(2), (d)(2); 351d(g)(2); 361(d); 364; 366)

[50 FR 33185, Aug. 16, 1985; 51 FR 2397, Jan. 16, 1986, as amended at 51 FR 18584, May 21, 1986]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 772.40 What are the financial obligations of a grantee?

A tribe that receives a grant under this program shall provide the difference between—

(a) The costs of carrying out the plan approved by the Secretary for that year; and

(b) The Federal allocation, which, in no case, exceeds 80 percent of the costs.

(Authority: 20 U.S.C. 351e(c))

§ 772.41 What are the additional financial obligations of a grantee that supports a public library system?

If an Indian tribe or Hawaiian native organization that receives a grant under this program supports a public library system, the grantee shall expend from Federal, State, and local sources for public library services an amount not less than the amount the grantee expended from those sources for public library services during the second year preceding the year for which the Secretary has approved a grant to the grantee under this program.

(Authority: 20 U.S.C. 351c(d)(2); 362(b))

[51 FR 18584, May 21, 1986]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 772.50 Who must administer funds under a special projects grant to an Indian tribe?

Funds granted to an Indian tribe under this program must be administered by a librarian.

(Authority: 20 U.S.C. 351c(c)(2))

PART 773—COLLEGE LIBRARY RESOURCES PROGRAM

Subpart A—General

Sec.
773.1 College library resources program.
773.2 Eligible applicants.

Sec.
773.3 Eligibility limitations.
773.4 Regulations that apply to the college library resources program.
773.5 Definitions that apply to the college library resources program.

Subpart B—Kinds of Projects the Secretary Assists Under This Program

773.10 Authorized activities.

Subpart C—How To Apply for a Grant

773.20 Limitations on number of applications.
773.21 Application requirements.
773.22 Application for waiver of maintenance of effort.
773.23 Application from a combination of institutions.

Subpart D—How the Secretary Makes a Grant

773.30 How the Secretary judges applications.
773.31 Amount of grant.

Subpart E—Conditions That Must Be Met by Grantee

773.40 Maintenance of effort requirement
773.41 Coordination with other groups.

AUTHORITY: Part A of Title II of the Higher Education Act of 1965, as amended by the Education Amendments of 1980 (Pub. L. 96-374), 96 Stat. 1383 (20 U.S.C. 1021, *et seq.*)

SOURCE: 46 FR 31866, June 17, 1981, unless otherwise noted.

Subpart A—General

§ 773.1 College library resources program.

The College Library Resources Program assists institutions of higher education and other public and nonprofit private library institutions to—

(a) Improve the quality of their library resources, including law library resources; and

(b) Share their library resources through the establishment and maintenance of networks.

(Authority: Secs. 201, 211 of the Act; 20 U.S.C. 1021, 1029)

§ 773.2 Eligible applicants.

The following are eligible to apply for a grant under the College Library Resources Program:

(a) An institution of higher education.

(b) A branch of an institution of higher education.

(c) A combination of institutions of higher education.

(d) A public or nonprofit private library institution.

(Authority: Sec. 211 of the Act; 20 U.S.C. 1029)

§ 773.3 Eligibility limitations.

(a) A department library or a professional school within an institution of higher education may not apply separately as a branch.

(b) A grantee under section 231 of the Act, Part C of Title II (Strengthening Research Library Resources), is ineligible to receive a grant under this part for the same fiscal year.

(Authority: Secs. 211, 231 of the Act; 20 U.S.C. 1029, 1041)

§ 773.4 Regulations that apply to the college library resources program.

The following regulations apply to the College Library Resources Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 Part CFR 77 (Definitions); and

(b) The regulations in this Part 773.

(Authority: 20 U.S.C. 3474)

§ 773.5 Definitions that apply to the college library resources program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Acquisition
Applicant
Application
Award
Department
EDGAR
Fiscal Year
Grant
Grant Period
Nonprofit
Private
Public
Secretary

(b) *Definitions that apply to this part.* The following definitions apply to this part:

Acquisition means the term as defined in EDGAR, 34 CFR Part 77. For the purposes of this program it also includes cataloging and necessary first binding.

Act means the Higher Education Act of 1965, as amended.

Branch means a campus of an institution of higher education if that campus is—

(1) Located in a community in the United States different from that of the parent institution;

(2) Not within a reasonable commuting distance from the main campus; and

(3) Offering college level programs for which library facilities, services, and materials are necessary.

Combination of institutions of higher education means—

(1) Institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out a common objective; or

(2) A public or nonprofit private agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

Expenditures for total library purposes means expenditures for the maintenance and operation of libraries, including salaries, wages, supplies, materials, and equipment.

Institution of higher education means, in any State, an educational institution that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of that type of certificate;

(2) Is legally authorized within the State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward a bachelor's degree;

(4) Is a public or nonprofit private institution; and

(5) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited—

(i) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance—considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards and the purpose for which this determination is being made—that the institution will meet the accreditation standards of a nationally recognized accrediting agency or association within a reasonable time; or

(ii) Is an institution whose credits are accepted, on transfer, by not fewer than three institutions that are so accredited for credit on the same basis as if transferred from an institution so accredited.

(6)(i) The term also includes any school that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (1), (2), (4), and (5) of this definition.

(ii) For purposes of this definition, the Secretary publishes a list of nationally recognized accrediting agencies or associations that the Secretary determines to be reliable authority as to the quality of training offered.

(7) The term also includes, in any State, a public or nonprofit private educational institution that, in lieu of the requirement in paragraph (1) of this definition, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

Library institution means an institution that is not part of an institution of higher education and whose primary function is to provide library and information services to institutions of higher education on a formal cooperative basis. An institution meets this requirement if—

(1) It demonstrates that it provides more than 50 percent of its library and information services to students, faculty, or other researchers at an institution of higher education; and

(2) It provides these services on a cooperative basis under a formal written agreement with one or more institutions of higher education.

Library material expenditures means—

(1) Expenditures for books, periodicals, documents, magnetic tapes, phonograph records, audio-visual materials, cataloging materials, and other printed and published materials that—

(i) Are suitable for inclusion in the library resources and law library resources of institutions of higher education and other eligible library institutions; and

(ii) With the exception of periodicals and newspapers, with reasonable care and use may be expected to last for more than one year; and

(2) Expenditures for the necessary first binding of these printed and published materials, but not the acquisition of equipment or supplies, or the cost of construction.

Network means a cooperative organization formed to share library resources and to provide services—such as computer services and telecommunications—to its members. Its members may include institutions of higher education and public or nonprofit private library institutions.

Resource Development Grant means a grant made under section 211 of the Act.

State Agency means the State agency designated under section 1203 of the Act.

(Authority: 20 U.S.C. 3474)

Subpart B—Kinds of Projects the Secretary Assists Under This Program

§ 773.10 Authorized activities.

(a) Funds awarded under this program may be used only—

(1) For the acquisition of books and other library materials; and

(2) To support the activities of a network, including, but not limited to, computer time, network membership; and user fees.

(b) Funds awarded under this program may not be used for—

(1) The acquisition of books and other library materials to be used primarily in connection with any medical library or similar facility that receives assistance in the same fiscal year for expanding or improving medical library resources under the Medical Library Assistance Act of 1965, as amended (42 U.S.C. 280b-7).

(2) Religious purposes. (See EDGAR, 34 CFR 75.532—"Use of funds for religion prohibited".)

(Authority: Sec. 211 of the Act; 20 U.S.C. 1029)

Subpart C—How To Apply for a Grant

§ 773.20 Limitations on number of applications.

An applicant may submit no more than one application in a fiscal year.

(Authority: Sec. 211 of the Act; 20 U.S.C. 1029)

§ 773.21 Application requirements.

In its application, an applicant shall:

(a) Provide information about itself and its library resources, and

(b)(1) Include an assurance that if it receives a grant under this program, it will meet the maintenance of effort requirement of § 773.40; or

(2) Request a waiver of the maintenance of effort requirement under § 773.22.

(Authority: 20 U.S.C. 3474)

§ 773.22 Application for waiver of maintenance of effort.

(a) If an applicant requests a waiver of the maintenance of effort requirement in § 773.40, it shall provide in its application a detailed description of the circumstances that it believes justifies the request.

(b) If the Secretary determines that there are very unusual circumstances that prevent the applicant from making the assurance required in § 773.21(b), the Secretary may waive the maintenance of effort requirement.

(c) The Secretary may waive the maintenance of effort requirement because of very unusual circumstances that either—

(1) Temporarily reduce the level of library material expenditures and expenditures for total library purposes; or

(2) Result in unusually high library material expenditures and expenditures for total library purposes.

(d) Very unusual circumstances include:

(1) Theft, vandalism, fire, flood, earthquake, or other exceptional and unforeseen occurrences;

(2) The establishment of a basic program of library service in the first five years of institutional operation;

(3) Sudden and substantial increases in enrollment; or

(4) Sudden and substantial increases in activities (e.g., library materials expenditures) due to an unusual, one-time receipt of funds.

(Authority: Sec. 211 of the Act; 20 U.S.C. 1029)

§ 773.23 Application from a combination of institutions.

In the case of an application from a combination of institutions of higher education, the combination may apply for:

(a) Its own grant; and

(b) If its members do not apply on their own behalf, of each of its members.

For example, combination A is composed of three institutions of higher education, X, Y, and Z. The combination A may apply for one resource development grant for itself, and it may also apply for separate grants on behalf of X, Y, and Z. However, X, Y, and Z may not apply separately if the combination A applies on their behalf.

(Authority: Sec. 211 of the Act; 20 U.S.C. 1029)

Subpart D—How the Secretary Makes a Grant

§ 773.30 How the Secretary judges applications.

The Secretary awards a grant to each eligible applicant that demonstrates its compliance with the Act and these regulations.

(Authority: Sec. 211 of the Act; 20 U.S.C. 1029)

§ 773.31 Amount of grant.

(a) The amount of a resource development grant may not exceed $10,000 for any fiscal year.

(b) The Secretary determines the amount of a resource development grant annually by dividing the amount of available funds by the number of eligible applicants that demonstrate compliance with the Act and these regulations.

(Authority: Sec. 211 of the Act; 20 U.S.C. 1029)

Subpart E—Conditions That Must Be Met by Grantee

§ 773.40 Maintenance of effort requirement.

During the fiscal year for which it has requested a grant, a grantee shall expend for all library material expenditures an amount—from funds other than funds received under this program—that equals or exceeds either—

(a) The average annual aggregate amount it expended for those materials during the two fiscal years preceding the fiscal year for which it is seeking assistance; or

(b)(1) The average amount per full-time equivalent student it expended for those purposes during the two fiscal years preceding the fiscal year for which it is seeking assistance.

(2) For the purposes of this section, the number of full-time equivalent students means—

(i) The sum of the number of students enrolled full-time at an institution; plus

(ii) The full-time equivalent of the number of students enrolled part time at this institution. This is determined by dividing the sum of the credit hours of all part-time students by twelve.

(Authority: Sec. 211 of the Act; 20 U.S.C. 1029)

§ 773.41 Coordination with other groups.

A grantee under this part shall annually inform the State agency designated under section 1203 of the Act of its project activities.

(Authority: Sec. 202 of the Act; 20 U.S.C. 1022)

PART 776—LIBRARY CAREER TRAINING PROGRAM

Subpart A—General

Sec.
776.1 What is the Library Career Training Program?
776.2 Who is eligible for an award?
776.3 Who is eligible to participate in a project?
776.4 What activities may the Secretary fund?
776.5 What priorities may the Secretary establish?
776.6 What regulations apply?
776.7 What definitions apply?
776.8 What is the duration of a project?

Subpart B—How Does One Apply for an Award?

776.10 What requirements apply to all applicants for fellowships, institutes, and traineeships?

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AUTHORITY: 20 U.S.C. 1021, 1031, 1032, unless otherwise noted.

SOURCE: 53 FR 19139, May 26, 1988, unless otherwise noted.

Subpart A—General

§ 776.1 What is the Library Career Training Program?

The Secretary awards grants under the Library Career Training Program to—

(a) Train or retrain persons in librarianship through fellowships, institutes, or traineeships; and

(b) Establish, develop, and expand programs of library and information science, including new techniques of information transfer and communication technology.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.2 Who is eligible for an award?

Eligible applicants are—

(a) Institutions of higher education; and

(b) Library organizations and agencies.

(Authority: 20 U.S.C. 1032)

§ 776.3 Who is eligible to participate in a project?

In order to be selected by a grantee as a participant in a project, an individual must—

(a)(1) Be a United States citizen or national;

(2) Provide evidence from the United States Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Be a permanent resident of the Trust Territory of the Pacific Islands;

(b) Be engaged in or preparing to engage in a profession or other occupation involving library or information science; and

(c) Meet the selection criteria of the grantee.

(Authority: 20 U.S.C. 1032)

§ 776.4 What activities may the Secretary fund?

A grantee may conduct one or more fellowship projects, institute projects, and traineeship projects with funds under this program.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.5 What priorities may the Secretary establish?

(a) The Secretary may give priority to applications that propose one or more of the following:

(1) To train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

(2) To train or retrain library personnel in new techniques of information acquisition, transfer, and communication technology.

(3) To increase excellence in library leadership through advanced training in library management.

(4) To increase excellence in library education by encouraging study in librarianship and related fields at the doctoral level.

(5) To provide advanced training in the development, structure, and management of new library organizational formats, such as networks, consortia, and information utilities.

(6) To train or retrain library personnel to serve the information needs of the elderly, the illiterate, the disadvantaged, or residents of rural America.

(b) The Secretary established priorities by publishing a notice in the FEDERAL REGISTER, in accordance with 34 CFR 75.105.

(Authority: 20 U.S.C. 1032)

§ 776.6 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 776.

(Authority: 20 U.S.C. 1021)

§ 776.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract (includes definition of Subcontract)
Department
EDGAR
Grant
Grantee
Private
Project
Project period
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Act means the Higher Education Act of 1965, as amended.

Dependent means a spouse or other person who receives more than half of his or her support from a participant during the course of a project conducted under this program, or any person identified as a personal exemption on a participant's income tax return for the calendar year preceding the year in which the participant is enrolled in the project.

Disadvantaged refers to those persons whose socio-economic or educational deprivation or whose cultural isolation from the general community may preclude them from benefiting from library services to the same extent as the general community benefits from these services.

Fellowship means an award of financial assistance to an individual who has been accepted for admission to an institution of higher education and who is or will be enrolled full-time in a graduate or undergraduate program of library and information science, working toward or completing the requirements for a specific degree in some aspect of librarianship.

Institute means a specialized long-term or short-term group training project in librarianship that—

(1) Is separate from the regular academic program of the applicant;

(2) Has an innovative curriculum; and

(3) Either provides persons with the skills needed to enter the library and information science field or provides library and information science personnel—including library educators—an opportunity to strengthen or increase their knowledge and skills.

Institution of higher education means an institution of higher education as defined in section 1201 of the Act.

Librarianship means the principles and practices of library and information science, including the acquisition, organization, storage, retrieval, and dissemination of information resources.

Library organization or agency means a public or private organization or agency that provides library services or programs.

Participant means a person who is enrolled in a training project funded under this part.

State agency means the State agency designated under section 1203 of the Act.

Traineeship means a training project in librarianship that—

(1) Is separate from the regular academic program of the applicant;

(2) Is designed to meet the individual needs of mid-level library and information science professionals; and

(3) Provides individualized instruction, usually through an internship.

(Authority: 20 U.S.C. 1021, 1032)

§ 776.8 What is the duration of a project?

(a) A fellowship or long-term institute project must provide at least one academic year but not more than 12 months of training.

(b) A short-term institute project must provide at least one week but no more than six weeks of training.

(c) A traineeship project may not exceed 12 months.

(Authority: 20 U.S.C. 1021, 1032)

Subpart B—How Does One Apply for an Award?

§ 776.10 What requirements apply to all applicants for fellowships, institutes, and traineeships?

(a) An applicant shall submit separate applications for fellowship, institute, and traineeship projects.

(b) An applicant shall submit separate applications for fellowships at the bachelor's, master's, post-master's, and doctoral levels.

(c) An applicant may request any number of fellowships.

(d) An applicant shall specify the amount to be paid to participants as stipends.

(Approved by the Office of Management and Budget under control number 1850-0022)

(Authority: 20 U.S.C. 1021, 1032)

[53 FR 19139, May 26, 1988, as amended at 53 FR 49148, Dec. 6, 1988]

Subpart C—How Does the Secretary Make an Award?

§ 776.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a fellowship project on the basis of the criteria in § 776.21 and awards up to 100 possible points for these criteria.

(b) The Secretary evaluates an application for an institute project on the basis of the criteria in § 776.22 and awards up to 100 possible points for these criteria.

(c) The Secretary evaluates an application for a traineeship project on the basis of the criteria in § 776.23 and awards up to 100 possible points for these criteria.

(d) The maximum score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1032)

§ 776.21 What selection criteria does the Secretary use to evaluate an application for a fellowship?

(a) *Project description.* (20 points) The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—

(1) The project addresses one or more of the program priorities selected by the Secretary in § 776.5(a);

(2) The project objectives are clearly stated, realistic, and satisfy a current training need;

(3) The required courses meet standards that are recognized by the library and information science profession; and

(4) The student field experience component (if included) is well designed.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(2) The quality of the design of the project;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) How well the objectives of the project relate to the purpose of the program; and

(5) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel will commit to the project.

(2) To determine the qualifications of these key personnel the Secretary considers—

(i) Experience, training, and professional productivity in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Participant selection.* (15 points) The Secretary reviews each application to determine the effectiveness of the applicant's method of selecting participants, including—

(1) Conformance with program priorities; and

(2) Evidence that admissions standards for participants are comparable to those for other students admitted to the library education program.

(e) *Applicant characteristics.* (20 points) The Secretary reviews each application to determine the applicant's commitment to library and information science education, including—

(1) The adequacy of the description in the applicant's catalog of the specific library education program in which participants will be enrolled;

(2) The extent to which the amount the applicant spends per student for education in librarianship is comparable to that of other education programs;

(3) The extent to which the ratio of degrees awarded to total enrollment in the applicant's library education program is comparable to that of other library education programs;

(4) The extent to which the ratio of requested fellowships to other fellowships and scholarships in librarianship supported by the applicant is comparable to that of other library education programs; and

(5) The extent to which the academic level of the project is appropriate to the applicant's capabilities or experience.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate to the project;

(2) Objective; and

(3) Designed to produce data that are quantifiable.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(h) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

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(Authority: 20 U.S.C. 1021, 1032)

[53 FR 19139, May 26, 1988, as amended at 53 FR 49148, Dec. 6, 1988]

§ 776.22 What selection criteria does the Secretary use to evaluate an application for an institute?

(a) *Project description.* (20 points) The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—

(1) The project addresses one or more of the program priorities selected by the Secretary in § 776.5(a);

(2) The subject matter of the project is significant, timely, well described, appropriate for an institute, and is not duplicated in the applicant's regular curriculum;

(3) The project duration is appropriate for presenting the subject matter;

(4) The project content satisfies rigorous educational standards;

(5) The blend of theoretical and practical training is suitable to the subject matter and the needs of the participants; and

(6) The training methods are innovative and imaginative.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel will commit to the project.

(2) To determine the qualifications of these key personnel, the Secretary considers—

(i) Experience, training, and professional productivity in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Participant selection.* (15 points) The Secretary reviews each application to determine the effectiveness of the method of participant selection, including the extent to which—

(1) Participants will be selected according to their ability, experience, current responsibilities, and training needs; and

(2) The number of participants is appropriate to the training methods and project resources.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (8 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate to the project;

(2) Objective; and

(3) Are designed to produce data that are quantifiable.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(g) *Adequacy of resources.* (7 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Project effectiveness.* (10 points) The Secretary reviews each application to determine the effectiveness of the project, including the extent to which—

(1) The project will increase the number of librarians with specialized skills;

(2) The project includes plans for disseminating promising results and high quality materials to other institutions or agencies.

(Approved by the Office of Management and Budget under control number 1850-0022)

(Authority: 20 U.S.C. 1032)

[53 FR 19139, May 26, 1988, as amended at 53 FR 49148, Dec. 6, 1988]

§ 776.23 What selection criteria does the Secretary use to evaluate an application for a traineeship?

(a) *Project description.* (15 points) The Secretary reviews each application to determine the quality of the applicant's project, including the extent to which—

(1) The project addresses one or more of the program priorities selected by the Secretary in § 776.5(a);

(2) The training needs to be met by the project are significant, of current interest to the library and information science community, and well described;

(3) Project activities are designed to meet the individual needs of each participant; and

(4) Other library agencies or institutions will cooperate with the applicant in providing appropriate and high quality internship opportunities.

(b) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel plan to commit to the project.

(2) To determine the qualifications of these key personnel, the Secretary considers—

(i) Experience, training, and professional productivity in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Participant selection.* (15 points) The Secretary reviews each application to determine the effectiveness of the applicant's method of participant selection, including the extent to which participants will be selected on the basis of their stated career goals and on their potential for high level advancement and continued professional growth within the field of library and information science.

(e) *Budget and cost effectiveness.* (10 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate for the project;

(2) Objective; and

(3) Are designed to produce data that are quantifiable.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(g) *Adequacy of resources.* (15 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Approved by the Office of Management and Budget under control number 1850-0022)

(Authority: 20 U.S.C. 1021, 1032)

[53 FR 19139, May 26, 1988, as amended at 53 FR 49148, Dec. 6, 1988]

Subpart D—What Conditions Must Be Met after an Award?

§ 776.30 What are the allowable costs for participants?

(a)(1) A grantee may use grant funds in the following amounts to cover the cost of providing fellowship training:

(i) For each fellowship awarded at the undergraduate level—$2000 for an academic year plus $500 for a summer session.

(ii) For each fellowship awarded at the master's level—$4600 for an academic year plus $800 for a summer session.

(iii) For each fellowship awarded at post-master's and doctoral levels—$6400 for an academic year plus $1000 for a summer session.

(2) A grantee shall use grant funds to pay stipends to fellowship participants in the following amounts:

(i) Undergraduate level—$2000 for an academic year plus $500 for a summer session.

(ii) Master's level—$4600 for an academic year plus $800 for a summer session.

(iii) Post-master's and doctoral level—$6400 for an academic year plus $1000 for a summer session.

(b) A grantee may use grant funds to pay stipends to institute participants in the following amounts:

(1) Long-term, full-time post-baccalaureate level—$4600 for an academic year plus $800 for a summer session.

(2) Long-term, full-time pre-baccalaureate level—$2000 for an academic year plus $500 for a summer session.

(3) Short-term, full-time—up to $375 per week.

(4) Part-time—up to $75 per day.

(c)(1) The grantee shall use grant funds to provide traineeship training in accordance with the allowable costs of providing training for either fellowships or institutes, whichever is applicable.

(2) The grantee may use grant funds to pay stipends to traineeship participants in accordance with the allowable costs of fellowships or institutes, whichever is applicable.

(d)(1) The Secretary may authorize travel allowances for participants—

(i) In cases of extreme hardship; and

(ii) If travel is necessary for successful participation in the project.

(2) The mileage rate must be consistent with rates applicable to Federal Government employees.

(3) The Secretary may defer authorization of travel allowances until the grantee establishes the need by appropriate documentation.

(e)(1) In cases of extreme hardship, the Secretary may authorize allowances for dependents of participants. The maximum amount that may be provided per dependent is $800 for an academic year, $200 for a summer session, and $50 per week for short-term projects.

(2) The Secretary may defer authorization of allowances for dependents until the grantee has documented need.

(f)(1) The grant award specifies the amount for stipends and dependency and travel allowances.

(2) The grantee shall disburse the stipends and the dependency and travel allowances to the appropriate project participants.

(Authority: 20 U.S.C. 1032)

§ 776.31 What are the restrictions on costs for participants?

A grantee may not charge tuition or fees to a participant in a training project funded under this program.

(Authority: 20 U.S.C. 1032)

§ 776.32 What are the allowances for assistance under other Federal programs?

(a) Any amount paid a participant from any other Federal grant program for educational purposes (except veterans', war orphans', and widows' educational assistance under Title 38, United States Code) must be deducted from the amount that participant would receive under this part.

(b) If a participant receives a federally assisted educational loan, the amount of the loan and any interest paid may not be deducted from the amount received by the participant under this part.

(Authority: 20 U.S.C. 1021, 1032 and 38 U.S.C. 1700)

§ 776.33 What requirements govern the removal, withdrawal, and substitution of participants?

(a) A grantee shall remove a participant from a training project if the grantee determines that the participant has ceased to maintain academic proficiency.

(b) If a grantee removes the participant or if a participant withdraws, the grantee—

(1) May replace the participant if the new participant can successfully complete the training at no additional cost to the Department; and

(2)(i) Shall notify the Secretary in writing—

(A) Within 30 days of the removal or withdrawal; or

(B) Within 30 days of a substitution if the grantee substitutes another participant.

(ii) The date of removal or withdrawal is—

(A) The date the grantee determined that the participant had ceased to maintain academic proficiency; or

(B) The last date the participant attended class.

(c)(1) If a grantee removes the participant or if the participant withdraws, the grantee shall prorate the participant's stipend and any allowances, according to the number of the weeks the participant has completed in the project.

(2) For purposes of paragraph (c)(1) of this section, the grantee shall count attendance in any part of a week as a full week.

(d) If a grantee does not substitute a participant for the participant who has been removed or who has withdrawn, the grantee shall return to the Federal Government the unused portion of the stipend and any allowances.

(Authority: 20 U.S.C. 1032)

§ 776.34 What agencies must be informed of activities funded by this program?

Each institution of higher education that receives a grant under this part shall annually inform the agency designated under section 1203 of the Act of its project activities.

(Authority: 20 U.S.C. 1022)

PART 777—LIBRARY RESEARCH AND DEMONSTRATION PROGRAM

Subpart A—General

Sec.
777.1 The Library Research and Demonstration Program.
777.2 Eligible parties.
777.3 Regulations that apply to this program.
777.4 Definitions that apply to this program.

Subpart B—Kinds of Projects the Secretary Assists Under This Program

777.10 Authorized activities.

Subpart C—How To Apply for a Grant

777.20 Application requirements.

Subpart D—How the Secretary Makes a Grant

777.30 How the Secretary judges applications.
777.31 Selection criteria for evaluating applications.

Subpart E—Conditions That Must Be Met by a Grantee

777.40 Coordination with other groups.

AUTHORITY: 20 U.S.C. 1021 *et seq.*, unless otherwise noted.

SOURCE: 46 FR 37484, July 20, 1981, unless otherwise noted.

Subpart A—General

§ 777.1 The Library Research and Demonstration Program.

The Library Research and Demonstration Program encourages research, development, and demonstration activities relating to—

(a) The improvement of libraries, including—

(1) The promotion of economical and efficient delivery of information;

(2) Cooperative efforts; and

(3) Developmental projects.

(b) Training in librarianship.

(c) The dissemination of information derived from these projects.

(Authority: Secs. 201, 223 of the Act; 20 U.S.C. 1021, 1033)

[46 FR 37484, July 20, 1981, as amended at 53 FR 3021, Feb. 3, 1988]

§ 777.2 Eligible parties.

An application for assistance under this program may be submitted by—

(a) An institution of higher education.

(b) A public or private agency, institution, or organization.

(Authority: Sec. 223 of the Act; 20 U.S.C. 1033)

§ 777.3 Regulations that apply to this program.

The following regulations apply to grants under the Library Research and Demonstration Program:

(a) The Education Department General Administration Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) A different set of regulations apply to contracts made under this program. (See EDGAR, 34 CFR 75.4 Education Department contracts.)

(Authority: 20 U.S.C. 3474)

§ 777.4 Definitions that apply to this program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Equipment
Facilities
Grant
Grantee
Private
Project
Public
Secretary
Supplies

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

"Institution of higher education" means the type of institution defined by section 1201 of the Act.

"Librarianship" means the principles and practices of the library and information science, including the acquisition, organization, storage, retrieval and dissemination of information, and reference and research use of library and other information resources.

(Authority: 20 U.S.C. 1141; 3474)

Subpart B—Kinds of Projects the Secretary Assists Under This Program

§ 777.10 Authorized activities.

(a) The Secretary may award a grant for a project that supports research, development, demonstration, or any combination of these, related to—

(1) The improvement of libraries through—

(i) The promotion of economical and efficient delivery of information;

(ii) Cooperative efforts; and

(iii) Developmental projects;

(2) Training in librarianship; and

(3) The dissemination of information derived from a project funded under this program.

(b) A project that includes any one or more of the activities described in § 777.10(a) may be supported under this program.

(Authority: Secs. 201, 223 of the Act; 20 U.S.C. 1021, 1033)

[46 FR 37484, July 20, 1981, as amended at 53 FR 3021, Feb. 3, 1988]

Subpart C—How To Apply for a Grant

§ 777.20 Application requirements.

An applicant shall demonstrate, in its application, that the project meets the requirements of the Act and all applicable regulations.

(Authority: Sec. 223 of the Act; 20 U.S.C. 1033)

Subpart D—How the Secretary Makes a Grant

§ 777.30 How the Secretary judges applications.

(a) The Secretary evaluates an application on the basis of the criteria in § 777.31 and awards up to 100 points for these criteria.

(b) The maximum possible score for each criterion is indicated in parentheses next to the heading of that criterion.

(Authority: 20 U.S.C. 3474)

§ 777.31 Selection criteria for evaluating applications.

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (b)(2)(ii) will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Significance of proposed project.* (30 points)

The Secretary reviews each application for information that shows the extent to which—

(1) The proposed research, development, or demonstration (or any combination) activities—

(i) Address an important library or information problem;

(ii) Are likely to improve operations or service in a significant number of libraries; or

(iii) Are likely to fulfill unmet informational, educational, or cultural needs related to libraries and information science.

(2) The applicant demonstrates an understanding of the nature and magnitude of the needs to be addressed, as well as the success or failure of related research, development, or demonstration activity.

(g) *Dissemination and continuation.* (5 points)

The Secretary reviews each application for information that shows that—

(1) The results of the project will be adequately disseminated or replicated; and

(2) To the extent possible, the project results will be implemented or continued after the termination of Federal funding.

(Approved by the Office of Management and Budget under control number 1850-0600)

(Authority: 20 U.S.C. 1033; 3474)

[46 FR 37484, July 20, 1981, as amended at 53 FR 49148, Dec. 6, 1988]

Subpart E—Conditions That Must Be Met by a Grantee

§ 777.40 Coordination with other groups.

An institution of higher education that receives a grant under this part shall annually inform the State agency, designated under Section 1203 of the Act, of its project activities.

(Authority: Sec. 202 of the Act; 20 U.S.C. 1022)

PART 778—STRENGTHENING RESEARCH LIBRARY RESOURCES

Subpart A—General

Sec.

778.1 What is the Strengthening Research Library Resources Program?
778.2 Who is eligible for an award?
778.3 What restrictions on eligibility apply?
778.4 What activities may the Secretary fund?
778.5 What are the objectives of the Strengthening Research Library Resources Program?
778.6 What regulations apply?
778.7 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

778.20 How does the Secretary evaluate an application?
778.21 What criteria does the Secretary use to evaluate an applicant as a major research library?
778.22 What criteria does the Secretary use to evaluate the quality of a project?
778.23 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

778.30 What agencies must be informed of activities funded under this program?

AUTHORITY: 20 U.S.C. 1021, 1041, 1042, unless otherwise noted.

SOURCE: 53 FR 17150, May 13, 1988, unless otherwise noted.

Subpart A—General

§ 778.1 What is the Strengthening Research Library Resources Program?

The Secretary awards grants under the Strengthening Research Library Resources Program for the purpose of promoting research and education of high quality throughout the United States by providing financial assistance to help the Nation's major research libraries—

(a) Maintain and strenghten their collections; and

(b) Make their holdings available to other libraries whose users have need for research materials.

(Authority: 20 U.S.C. 1021, 1041)

§ 778.2 Who is eligible for an award?

(a) The Secretary awards grants under this program to institutions with major research libraries.

(b) An institution with a major research library is defined as a public or private nonprofit institution, an institution of higher education (including a branch campus), an independent research library, a State or other public library, or a consortium of the above entities, having a library collection available to qualified useres that—

(1) Makes a significant contribution to higher education and research;

(2) Is broadly based;

(3) Is recognized as having national or international significance for scholarly research;

(4) Is of a unique nature, containing material not widely available; and

(5) Is in substantial demand by researchers and scholars outside the institution.

(c) The Secretary evaluates an applicant's status as a major research library on the basis of the criteria in §§ 778.20 and 778.21. If the Secretary determines that an applicant meets the criteria of a major research library, the determination is effective for each of the four succeeding fiscal years.

(d) An institution that does not meet the criteria for a major research library in §§ 778.20 and 778.21 may still be eligible to receive a grant, if it demonstrates that the particular library collection proposed for grant assistance is of national or international significance for scholarly research.

(e) If an applicant is a consortium or a branch campus of an institution of higher education, the library collection of the consortium or the branch campus—rather than the separate library collections of each unit comprising the consortium or the institution of higher education—must satisfy the conditions of paragraphs (b) and (c) of this section.

(Approved by the Office of Management and Budget under control number 1850-0054)

(Authority: 20 U.S.C. 1021, 1041)

[53 FR 17150, May 13, 1988, as amended at 53 FR 49148, Dec. 6, 1988]

§ 778.3 What restrictions on eligibility apply?

The Secretary does not award a grant to an applicant otherwise eligible under this program if the applicant—

(a) Receives a grant under section 211 of the Act (College Library Resources Program) during the same fiscal year that it applies for a grant under this part; or

(b) Is eligible to receive a grant under other Federal programs, such as the Medical Library Assistance Act of 1965, for the project it proposes to receive assistance under this part, unless the applicant shows that—

(1) Payments under this part will not duplicate payments under those other Federal programs; and

(2) Special circumstances warrant assistance under this part.

(Authority: 20 U.S.C. 1021, 1041)

§ 778.4 What activities may the Secretary fund?

Funds provided under this part may be used for one or both of the purposes in § 778.1. Authorized activities include, but are not limited to, the following:

(a) Acquiring books and other materials to be used for library purposes.

(b) Binding, rebinding, and repairing books and other materials to be used for library purposes, and preserving these materials by making photocopies, treating paper or bindings to lengthen their life, or other means.

(c) Cataloging, abstracting, and making available lists and guides of the library collection.

(d) Distributing library materials and bibliographic information to users beyond the primary clientele by mail, or by electronic, photographic, magnetic, optical, or other means.

(e) Acquiring additional equipment and supplies that assist in making library materials available to users beyond the primary clientele.

(f) Hiring necessary additional staff to carry out activities funded under this part.

(g) Communicating with other institutions.

(h) Performing evaluations.

(i) Disseminating information.

(Authority: 20 U.S.C. 1021)

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§ 778.5 What are the objectives of the Strengthening Research Library Resources Program?

Applicants are encouraged to design projects that will accomplish one or more of the following objectives:

(a) Adapt, convert, or create library records for unique research materials which expand or otherwise complement the national bibliographic database and which conform to highest national standards.

(b) Augment unique collections of specialized research materials.

(c) Preserve or maintain unique research materials in danger of deterioration.

(d) Promote the sharing of library resources.

(Authority: 20 U.S.C. 1021)

§ 778.6 What regulations apply?

The following regulations apply to the Strengthening Research Library Resources Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 778.

(Authority: 20 U.S.C. 1021)

§ 778.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Acquisition
Applicant
Application
Department
EDGAR
Fiscal year
Grant
Nonprofit
Private
Project
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to this part:

Act means the Higher Education Act of 1965, as amended.

Branch campus means a campus of an institution of higher education located in a community of the United States different from that of the parent institution, not within a reasonable commuting distance from the main campus, that is separately accredited, and that provides—through its own budgetary and hiring authority, and faculty and administrative staff—postsecondary educational programs for which library facilities, services, and materials are necessary.

Consortium means a nonprofit organization of library institutions established or operated for the purpose of sharing library resources, coordinating collection development, or engaging in similar cooperative activities.

Institution of higher education means a public or private nonprofit institution of higher education as defined in 34 CFR § 668.2.

Primary clientele means students, faculty, or other registered users of the library of the applicant or grantee.

State agency means the State agency designated under section 1203 of the Act.

(Authority: 20 U.S.C. 1021)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 778.20 How does the Secretary evaluate an application?

(a) In evaluating applications for new grants, the Secretary uses two sets of criteria.

(b)(1) The Secretary determines an applicant's status as a major research library on the basis of the criteria in § 778.21. An applicant that receives a score of 65 points or more under the criteria in § 778.21 is determined to be a major research library and qualifies to have its project evaluated for an award.

(2) The Secretary notifies an applicant that does not receive a score of 65 points or more under the criteria in § 778.21 that the application will still be considered for funding if additional

information or documents are provided to demonstrate the national or international significance for scholarly research of the particular collection described in the grant application.

(c) The Secretary evaluates the quality of the applications from applicants that qualify under paragraphs (b)(1) and (b)(2) of this section, using the criteria in § 788.22.

(Authority: 20 U.S.C. 1021)

§ 778.21 What criteria does the Secretary use to evaluate an applicant as a major research library?

The Secretary uses the criteria in this section to evaluate an applicant's status as a major research library. The maximum score is 100 points. The Secretary reviews each application to determine the extent to which the applicant's library collection—

(a) Makes a significant contribution to higher education and research as measured by factors such as—(20 points)

(1) The major research projects for which the library has made resources available in the past fiscal year;

(2) The amount the applicant expended in research funds from all sources and the number of projects conducted by the institution with these funds in the past fiscal year; and

(3) Evidence that the institution is established and recognized in the field of advanced research and scholarship;

(b) Is broadly based as measured by factors such as—(20 points)

(1) The number of subject areas covered or the comprehensiveness of special collections;

(2) The number of volumes and titles, manuscripts, microforms, and other types of materials;

(3) The number of volumes and titles and other materials added to the collection in the previous fiscal year; and

(4) The number of current periodical subscriptions;

(c) Is recognized as having national or international significance for scholarly research as measured by factors such as—(20 points)

(1) The number of percentage of interlibrary loans made or copies of materials provided by the applicant during the past year to libraries outside the geographical region in which the applicant is located;

(2) The number or percentage of interlibrary loans made or copies provided during the past year to libraries located outside the United States; and

(3) The extent to which loans of the applicant's materials described in paragraphs (c)(1) and (c)(2) of this section are made under formal, cooperative arrangements;

(d) Is of a unique nature, and contains material not widely available, as measured by factors such as—(20 points)

(1) The number and nature of special collections containing research materials not widely available;

(2) The availability of printed, computerized, or otherwise published catalogs or other guides to the special collections; and

(3) Evidence which demonstrates possession of uncommon library resources necessary to support advanced research and scholarship; and

(e) Is in substantial demand by researchers and scholars not connected with the applicant institution as measured by factors such as—(20 points)

(1) The number or percentage of loan requests coming from users outside the applicant's primary clientele;

(2) The extent to which the applicant lends more on interlibrary loan than it borrows;

(3) The number or percentage of researchers and scholars outside the applicant's primary clientele who use its collection;

(4) The number of institutions with which the applicant has formal cooperative agreements to provide library and information services for researchers and scholars outside the applicant's primary clientele; and

(5) Active membership in a major computer-based bibliographic database.

(Approved by the Office of Management and Budget under control number 1850-0054)

(Authority: 20 U.S.C. 1021, 1041)

[53 FR 17150, May 13, 1988, as amended at 53 FR 49148, Dec. 6, 1988]

§ 778.22 What criteria does the Secretary use to evaluate the quality of a project?

The Secretary uses the following criteria to evaluate the quality of the proposed project. The maximum score is 100 points.

(a) *Description of the project.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The purpose of the project is clearly stated;

(2) There is a concise description of the project; and

(3) There is a clear statement of the project objectives.

(b) *Significance of the project.* (45 points) The Secretary reviews each application to determine the importance of the project for scholarly research and inquiry by assessing—

(1) The uniqueness of the project;

(2) The size of the audience of the project is intended to serve;

(3) The need for the project;

(4) The extent to which the project will increase the availability of the applicant's research collections;

(5) The extent to which the proposed project will help the applicant maintain and strengthen its collections, particularly collections which have national or international significance for scholarship research;

(6) The extent to which the applicant intends to disseminate the project accomplishments to the scholarly and professional communities; and

(7) In the case of a joint application submitted by two or more institutions, the extent to which there will be significant project accomplishments as a result of the cooperative undertakings of the institutions.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(d) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director, if one is to be used;

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that these key personnel will commit to the project.

(2) To determine the qualifications of these key personnel, the Secretary considers—

(i) Education, experience, and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation are—

(1) Appropriate to the project;

(2) Objective; and

(3) Produce data that are quantifiable.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(g) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Institutional commitment.* (5 points) The Secretary reviews each application to determine the extent of the applicant's commitment to the project, its capability to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Approved by the Office of Management and Budget under control number 1850-0054)

(Authority: 20 U.S.C. 1021, 1041)

[53 FR 17150, May 13, 1988, as amended at 53 FR 49148, Dec. 6, 1988]

§ 778.23 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 778.22, the Secretary determines whether the most highly rated projects are broadly and equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of funded projects. Before selecting the most highly rated applications for funding, the Secretary considers—

(1) The geographical distribution of projects funded under this program during the preceding five fiscal years; and

(2) The impact of that distribution on the needs of the research community.

(Authority: 20 U.S.C. 1042)

Subpart D—What Conditions Must Be Met After an Award?

§ 778.30 What agencies must be informed of activities funded under this program?

Each institution of higher education which receives a grant under this part shall annually inform the State agency designated under section 1203 of the Act of its activities under this part.

(Authority: 20 U.S.C. 1022)

PART 779—COLLEGE LIBRARY TECHNOLOGY AND COOPERATION GRANTS PROGRAM

Subpart A—General

Sec.
779.1 What is the College Library Technology and Cooperation Grants Program
779.2 What Types of grants does the Secretary provide?
779.3 Who is eligible for an award?
779.4 What activities may the Secreta fund?
779.5 What priorities may the Secreta establish?
779.6 What regulations apply?
779.7 What definitions apply?
779.8 What is the time period for expen ture of grant funds?

Subpart B—How Does One Apply for an Award?

779.10 How does an applicant satisfy th matching requirement?

Subpart C—How Does the Secretary Make a Award?

779.20 How does the Secretary evaluate a application?
779.21 What selection criteria does th Secretary use?

Subpart D—What Conditions Must be Met After an Award?

779.30 What agency must be informed o activities funded by this program?

AUTHORITY: 20 U.S.C. 1021 and 1047 unless otherwise noted.

SOURCE: 53 FR 27114, July 18, 1988, unles otherwise noted.

Subpart A—General

§ 779.1 What is the College Library Technology and Cooperation Grants Program?

The College Library Technology and Cooperation Grants Program provides grants of at least $15,000 for technological equipment and other special purposes designed to encourage the use of technology to enhance library resource sharing.

(Authority: 20 U.S.C. 1047)

§ 779.2 What types of grants does the Secretary provide?

Under the College Library Technology and Cooperation Grants Program, the Secretary shall make competitive awards in each of the following four types of grants:

(a) *Networking Grants*. These grants are designed to plan, develop, acquire, install, maintain, or replace technological equipment and software necessary to participate in networks for sharing of library resources.

(b) *Combination Grants.* These grants are designed to establish and strengthen joint-use library facilities, resources, software, or equipment.

(c) *Services to Institutions Grants.* These grants are designed to establish, develop, or expand programs or projects that improve the grantee's service to institutions of higher education.

(d) *Research and Demonstration Grants.* These grants are designed to conduct research or demonstration projects to meet specialized national or regional needs in utilizing technology to enhance library and information sciences.

(Authority: 20 U.S.C. 1047)

§ 779.3 Who is eligible for an award?

The following are eligible to receive an award under this program:

(a) For Networking Grants, institutions of higher education.

(b) For Combination Grants, combinations of institutions of higher education.

(c) For Services to Institutions Grants, public or nonprofit private organizations (other than institutions of higher education) that provide library and information services to institutions of higher education on a formal cooperative basis.

(d) For Research and Demonstration Grants, institutions of higher education.

(Authority: 20 U.S.C. 1047)

§ 779.4 What activities may the Secretary fund?

(a) The Secretary awards grants under this program to enable eligible recipients to develop or implement activities or services that the Secretary determines are likely to carry out a purpose specified in § 779.2.

(b) The types of activities or services referred to in paragraph (a) of this section may include, but are not limited to:

(1) Networking membership fees and expenses;

(2) Acquisition of equipment and supplies, including computer hardware and software;

(3) Telecommunications expenses;

(4) Salaries of project personnel;

(5) Evaluation of the project; and

(6) Dessemination of information about the project.

(Authority: 20 U.S.C. 1047)

CROSS REFERENCE: (See 34 CFR Part 74, Appendix D.)

§ 779.5 What priorities may the Secretary establish?

(a) Each year, the Secretary may give priority to one or more of the four types of grants listed in § 779.2.

(b) The Secretary announces these priorities in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1047)

CROSS REFERENCE: (See 34 CFR 75.105 Annual priorities.)

§ 779.6 What regulations apply?

The following regulations apply to the College Library Technology and Cooperation Grants Program:

(a) The Education Department General Administration Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs,), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 779.

(Authority: 20 U.S.C. 1021)

§ 779.7 What definitions apply?

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract
EDGAR
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Combination of institutions of higher education means—

(1) Two or more institutions of higher education that have entered into a formal cooperative agreement for the purpose of carrying out a common objective; or

(2) A public or nonprofit private agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

Institution of higher education means a public or nonprofit private institution of higher education as defined in 34 CFR 668.3.

Joint-use means shared facilities, resources, and services of member institutions of a combination of institutions of higher education.

Librarianship means the principles and practices of library and information science, including the acquisition, organization, storage, retrieval, and dissemination of information resources.

Library organization or agency means a public or nonprofit private organization or agency that provides library services or programs.

Network means a system of sharing library resources that is developed, maintained, or operated by a library organization or agency and that possesses that following characteristics:

(1) The system is primarily or exclusively used by other library organizations or agencies.

(2) The system provides users with cooperative services or activities beyond traditional interlibrary loan services.

(3) The system is not restricted in access or use to units, departments, branches, or components that are part of the library organization or agency sponsoring the system.

(4) The system is constituted under a formal written instrument that describes services, activities, and membership offered by the system.

(Authority: 20 U.S.C. 1021)

§ 779.8 What is the time period for expenditure of grant funds?

Grant funds for these projects may be expended over a three-year period.

(Authority: 20 U.S.C. 1047)

Subpart B—How Does One Apply for an Award?

§ 779.10 How does an applicant satisfy the matching requirement?

An applicant shall, in its application, give satisfactory assurance that, if it is selected as a grantee, it will—

(a) Expend, for the same purposes as the propose for which the grant is made, an amount not less than one-third of the grant during the three-year period for which the grant is made; and

(b) Make the expenditure from funds other than funds received under Title II of the Higher Education Act of 1965.

(Authority: 20 U.S.C. 1047)

Subpart C—How Does the Secretary Make an Award?

§ 779.20 How does the Secretary evaluate an application?

(a) The Secretary uses the general selection criteria in § 779.21(a) and the special program criteria in § 779.21(b) to evaluate applications for new grants.

(b) The maximum possible score for the general criteria is 60 points.

(c) The maximum possible score for the specific criteria is 40 points.

(Authority: 20 U.S.C. 1047)

§ 779.21 What selection criteria does the Secretary use?

(a) *General selection criteria.* An applicant may receive up to 60 points under the general selection criteria in this section, for each type of grant, as follows:

(1) *Project description* (10 points). The Secretary reviews each application to determine the quality of the applicant's project, including—

(i) A concise description of the project;

(ii) A clear statement of the project objectives; and

(iii) Evidence of adequate planning.

(2) *Plan of operation* (15 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The effectiveness of the plan of management to assure proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program; and

(iv) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(3) *Quality of key personnel* (15 points). The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (a)(3)(i) and (ii) of this section will commit to the project; and

(iv) Key personnel's knowledge of librarianship and library technology.

(4) *Budget and cost-effectiveness* (10 points). The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(5) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(6) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) Are objective and produce data that are quantifiable. Cross Reference. (See 34 CFR 75.590 Evaluation by the grantee.)

(b) *Special program criteria.* An applicant may receive up to 40 points under the special program criteria in this section for each type of grant, as follows:

(1) *Networking Grants.* The Secretary reviews each Networking Grant application to determine the extent to which—

(i) The project strengthens the academic programs of the institution;

(ii) There is a need for special assistance as evidenced by the inability of the institution, because of fiscal constraints, institutional size, or any other factors—

(A) To plan, develop, acquire, install, maintain, or replace technological equipment with its existing resources; and

(B) To participate in resource-sharing networks;

(iii) There is evidence of commitment to the project, capability to continue the project, and the likelihood that the applicant will build upon the project when the grant period ends;

(iv) There is evidence of strong and continuing institutional willingness to share library resources and to participate in cooperative arrangements with other libraries;

(v) The project would increase local, regional, or national access to materials; and

(vi) The applicant possesses, or will possess, after an award of a grant under this program, equipment and software compatible with that of other members of the network.

(2) *Combination Grants.* The Secretary reviews each Combination Grant application to determine the extent to which—

(i) There is a need for special assistance as evidenced by the inability of the institution to establish and strengthen joint use of library facilities, resources, or equipment with its existing resources because of fiscal constraints, institutional size, or any other factors;

(ii) There is evidence of commitment to the project, capability to continue the project, and the likelihood that the applicant will build upon the project when the grant period ends;

(iii) There is evidence of willingness to share library resources and to participate in cooperative arrangements with other academic libraries;

(iv) The academic programs of the institutions of higher education described in the application would be strengthened by the project;

(v) Local, regional, or national academic resource sharing would increase;

(vi) Project equipment and software would be compatible with that of other academic networks; and

(vii) Technological expertise would be shared with the academic library community.

(3) *Services to Institutions Grants.* The Secretary reviews each Services to Institutions Grant application to determine the extent to which—

(i) The project would establish, develop, or expand local, regional, or national resource-sharing programs;

(ii) There is a demonstrated level of support from institutions of higher education that the project is needed and desired;

(iii) There is evidence of the applicant's commitment to the project and capability to continue the project, and of the likelihood that the applicant will build upon the project when the grant period ends; and

(iv) There is evidence that formal written cooperative agreements to provide library and information services exist between the applicant and the institutions of higher education identified in the application.

(4) *Research and Demonstration Grants.* The Secretary reviews each Research and Demonstration Grant application to determine the extent to which—

(i) The applicant proposes an innovative approach in utilizing technology for library services;

(ii) There is evidence from library users, library educators, or library administrators that the research or demonstration project is desirable;

(iii) The project meets a special national or regional need in utilizing technology to enhance library or information sciences;

(iv) The project was developed in consultation with leading experts and takes account of current research; and

(v) The applicant provides plans to disseminate the results of the project.

(Approved by Office of Management and Budget under control number 1850-0622.)

(Authority: 20 U.S.C. 1047)

Subpart D—What Conditions Must Be Met after an Award?

§ 779.30 What agency must be informed of activities funded by this program?

Each applicant that receives a grant under this part shall annually inform the State agency designated under section 1203 of the Higher Education Act, as amended, of its activities under this part.

(Approved by the Office of Management and Budget under control number 1850-0622)

(Authority: 20 U.S.C. 1022)

[53 FR 27114, July 18, 1988, as amended at 53 FR 49148, Dec. 6, 1988]

PART 785—NATIONAL DIFFUSION NETWORK: GENERAL PROVISIONS

Subpart A—General

Sec.
785.1 What is the National Diffusion Network?
785.2 Who is eligible for an award?
785.3 What types of projects does the Secretary support?
785.4 What regulations apply?
785.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

785.20 How does the Secretary evaluate an application?

Subpart D—What Conditions Must Be Met After an Award?

785.30 What costs are not allowed?

AUTHORITY: 20 U.S.C. 2962, unless otherwise noted.

SOURCE: 52 FR 30612, Aug. 14, 1987, unless otherwise noted.

Subpart A—General

§ 785.1 What is the National Diffusion Network?

Under the National Diffusion Network (NDN), the Secretary supports activities designed to recognize and further excellence in education throughout the Nation.

(Authority: 20 U.S.C. 3851)

§ 785.2 Who is eligible for an award?

A public or nonprofit agency, organization, or institution that meets the appropriate qualifications in § 786.2, 787.2, 788.2 or 789.2 is eligible for an award under the National Network.

(Authority: 20 U.S.C. 3851)

§ 785.3 What types of projects does the Secretary support?

The Secretary supports the following through grants and contracts:

(a) Developer Demonstrator projects, as described in 34 CFR Part 786.

(b) Dissemination Process projects, as described in 34 CFR Part 787.

(c) State Facilitator projects, as described in 34 CFR Part 788.

(d) A Private School Facilitator project, as described in 34 CFR Part 789.

(Authority: 20 U.S.C. 3851)

§ 785.4 What regulations apply?

(a) *Grants.* The following regulations apply to grants under the National Diffusion Network:

(1) The Education Department General Administrative Regulations (EDGAR) In 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs—except § 75.650 (Participation of Students Enrolled in Private Schools)), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(2) The regulations in Parts 785 through 789.

(b) *Contracts.* The following regulations apply to contracts under the National Diffusion Network:

(1) The Federal Acquisition Regulation and the Education Department Acquisition Regulation in Title 48 of the Code of Federal Regulations.

(2) The regulations in Parts 785 through 789.

(Authority: 20 U.S.C. 3851)

§ 785.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in Parts 785, 786, 787, 788 and 789 are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget Period
Department
EDGAR
Equipment
Facilities
Grantee
Local educational agency (LEA)
Nonprofit
Project
Private
Public
State educational agency (SEA)

(Authority: 20 U.S.C. 3851)

(b) *Other definitions.* The following definitions also apply to Parts 785, 786, 787, 788 and 789:

Adoption means the use of an exemplary education program by an education service provider in a new setting.

Adoption agreement means an understanding among a Developer Demonstrator grantee, a State Facilitator grantee or the Private School Facilitator grantee and the officials of an education service provider concerning the responsibilities of each for the adoption of an exemplary education program.

Certified demonstration site means an adoption site that utilizes all key elements of an exemplary education program and is authorized by the exemplary education program sponsor to receive visitors and demonstrate the program.

Certified trainer means an individual authorized by an exemplary education program sponsor to perform certain functions such as awareness presentations, training and assistance in the adoption of an exemplary education program.

Education service provider means any public or nonprofit agency or organization responsible for the provision of education services, including State educational agencies (SEAs), local educational agencies (LEAs), nonprofit private educational agencies, public or nonprofit private institutions of higher education and other education-related agencies.

ERIC means the Educational Resources Information Center sponsored and supported by the Department of

Education to disseminate education research results, practitioner-related materials and other resource information.

Exemplary education program means a program, product, practice, or Dissemination Process that has Program Effectiveness Panel approval.

Joint Dissemination Review Panel or *JDRP* means the Panel that was convened by the Secretary to approve exemplary education programs and that was the predecessor to the Program Effectiveness Panel.

Local facilitator means a member of the central administrative or supervisory staff of an education service provider or a designee who is committed to installing an NDN program and who will provide needed administrative and logistical support for installing the program.

Program Effectiveness Panel or *PEP* means a panel of experts in the evaluation of education programs and in other areas of education, at least two-thirds of whom are not Federal employees, who are appointed by the Secretary, and who review and assign scores to programs according to the criteria in §§ 786.12 or 787.12.

Regional Educational Laboratories means regional laboratories funded by the Department to carry out applied educational research, development and related activities.

Research and Development Centers means centers funded by the Department to conduct educational research and development, and related activities.

(Authority: 20 U.S.C. 3851)

[52 FR 30612, Aug. 14, 1987, as amended at 54 FR 24649, June 8, 1989]

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 785.20 How does the Secretary evaluate an application?

The Secretary evaluates an application—

(a) For a Developer Demonstrator grant on the basis of the criteria in Part 786;

(b) For a Dissemination Process grant on the basis of the criteria in Part 787;

(c) For a State Facilitator grant on the basis of the criteria in Part 788; and

(d) For a Private School Facilitator grant on the basis of the criteria in Part 789.

(Authority: 20 U.S.C. 3851)

Subpart D—What Conditions Must Be Met After an Award?

§ 785.30 What costs are not allowed?

In addition to costs not allowed under 34 CFR Parts 74 and 75, funds may not be used for stipends for educational personnel to participate in training activities, or for construction, repair, remodeling, or alteration of facilities or sites. See EDGAR Part 74, Subpart 1—Cost Principles.

(Authority: 20 U.S.C. 3851)

PART 786—NATIONAL DIFFUSION NETWORK: DEVELOPER DEMONSTRATOR PROJECTS

Subpart A—General

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Authority: 20 U.S.C. 2962, unless otherwise noted.

Subpart A—General

§ 786.1 What is a Developer Demonstrator Project?

A Developer Demonstrator project must disseminate a specific exemplary education program nationwide.

(Authority: 10 U.S.C. 3851)

[52 FR 30614, Aug. 14, 1987]

§ 786.2 Who is eligible for an award?

(a) *New awards.* (1) Any public or nonprofit private agency, organization, or institution that has developed a program, product, or practice that has Program Effectiveness Panel approval or JDRP approval and that is in use in a site that can be visited may apply for a new Developer Demonstrator award.

(2) Exemplary education programs developed with either Federal or non-Federal funds are eligible for NDN funding.

(b) Any Developer Demonstrator grantee, otherwise eligible to apply for a continuation award, may apply for the continuation award even if either the PEP approval period or the JDRP approval period has expired.

(Authority: 20 U.S.C. 2962)

[52 FR 30614, Aug. 14, 1987, as amended at 54 FR 24649, June 8, 1989]

§ 786.3 What priorities may the Secretary establish?

(a)(1) Each year the Secretary may announce in a notice published in the FEDERAL REGISTER the program priorities for which applicants may apply for assistance.

(2) The Secretary selects priorities under this section taking into account any unmet national needs.

(b) The Secretary may select priorities from the following subject areas or special needs:

(1) English, including literature.

(2) Science.

(3) History, geography, and civics.

(4) Mathematics or higher mathematics.

(5) Reading.

(6) Written or oral communications.

(7) Health, including drug abuse prevention programs.

(8) Ethics.

(9) The humanities.

(10) Programs that assist in improving school discipline and foster an atmosphere conducive to learning.

(11) Foreign languages.

(12) Computer science.

(13) Programs that advance students' educational and occupational goals, such as courses in the fine and performing arts, vocational education, and industrial arts.

(14) Programs that improve students' skills in comprehension, analysis, and problem solving, including programs in philosophy.

(15) Programs that improve teaching and the quality of instruction.

(16) Educational leadership.

(17) School-wide and district-wide school improvement efforts.

(18) Drop-out prevention programs and programs for at risk students.

(19) Programs that foster parental involvement in schools.

(20) Physical education.

(c) In addition to the priorities listed in paragraph (b) of this section, the Secretary may establish priorities as specified in one or both of the following paragraphs:

(1) The Secretary may establish priorities at specified instructional levels, such as preschool, elementary, secondary, postsecondary, or adult education.

(2) The Secretary may establish as a priority one or more of the following special populations:

(i) Gifted and talented students.

(ii) Socioeconomically disadvantaged students.

(iii) Limited English proficient students.

(iv) Handicapped students.

(v) Migrant students.

(vi) Functionally illiterate adults or adolescents.

(d) The Secretary may also limit a priority established under paragraph (b) of this section to—

(1) An instructional level;

(2) One or more of the special populations listed in paragraph (c)(2) of this section; or

(3) Both an instructional level and one or more of the special populations listed in paragraph (c)(2) of this section.

(e) Each fiscal year the Secretary establishes, in accordance with 34 CFR 75.105(c)(2), a competitive preference for projects that have had fewer than six years total funding from the NDN.

(Authority: 20 U.S.C. 3851)

[52 FR 30614, Aug. 14, 1987, as amended at 54 FR 24649, June 8, 1989]

§ 786.4 What regulations apply?

The following regulations apply to Developer Demonstrator projects:

(a) The regulations in 34 CFR Part 785.

(b) The regulations in this Part 786.

(Authority: 20 U.S.C. 3851)

[52 FR 30614, Aug. 14, 1987]

Subpart B—How Does One Apply f an Award?

§ 786.10 What information and materi must an applicant submit to apply f an award?

To apply for an award, an applica shall submit a description of the exem plary education program, including—

(a) A description of training require to install the exemplary educatio program in new settings; and

(b) A representative sample of th instructional, classroom, or curriculu materials of the exemplary educatio program that would be disseminate by the project.

(Authority: 20 U.S.C. 2962)

[54 FR 24650, June 8, 1989]

§ 786.11 What must an applicant submi for review by the PEP?

For PEP review of a program, product, or practice, an applicant shall submit to the Secretary qualitative or quantitative evidence of the effectiveness of the program, product, or practice.

(Authority: 20 U.S.C. 2962)

[54 FR 24650, June 8, 1989]

§ 786.12 How does the PEP review a program, product or practice?

(a) The PEP reviews each program, product or practice for educational effectiveness on the basis of the criteria in paragraph (d) of this section.

(b) The PEP awards up to 100 points for these criteria.

(c) The maximum score for each criterion is indicated in parentheses.

(d) In reviewing each program, product or practice the PEP determines the following:

(1) *Evaluation design.* (40 points) The PEP determines the extent to which the evaluation design—

(i) Is appropriate for the program, product or practice;

(ii) Is based on a correct interpretation of relevant research and literature;

(iii) Demonstrates that a clear and attributable connection exists between the evidence of an educational effect and the program treatment; and

(iv) Addresses rival hypotheses.

(2) *Results.* (50 points) The PEP determines the extent to which the results indicate—

(i) That the program, product or practice's effect is convincing relative to similar programs; and

(ii) The outcome claims of the program, product or practice are valid.

(3) *Replication.* (10 points) The PEP determines the extent to which the program, product or practice can be used at other sites with the likelihood of achieving similar results.

(Authority: 20 U.S.C. 3851)

[52 FR 30614, Aug. 14, 1987. Redesignated and amended at 54 FR 24650, June 8, 1989]

§ 786.13 How is PEP approval granted?

PEP approval is granted if the PEP has given the program, product, or practice a score of at least 40 points for the criterion in § 786.12(d)(2) (*Results*) and a total score of at least 70 points.

(Authority: 20 U.S.C. 2962)

[54 FR 24650, June 8, 1989]

§ 786.14 How long does PEP approval last?

PEP approval remains in effect for six years after the date of approval.

(Authority: 20 U.S.C. 2962)

[54 FR 24650, June 8, 1989]

§ 786.15 How long does JDRP approval last?

JDRP approval remains in effect for six years after the date of approval.

(Authority: 20 U.S.C. 2962)

[54 FR 24650, June 8, 1989]

§ 786.16 What activities must an applicant propose to carry out if it receives an award?

A Develop Demonstrator project must—

(a) Develop and provide materials for information about the exemplary education program and for training to install the program;

(b) Negotiate adoption agreements with State Facilitator grantees, the Private School Facilitator grantee and education service providers;

(c) Assist those seeking to adopt the exemplary education program in new settings by providing training and technical assistance if requested by education service providers;

(d) Monitor and evaluate the quality, effectiveness and educational results of the adoptions;

(e) Maintain records during the grant period concerning the use of the exemplary education program, including demographic and evaluation data;

(f) Develop and implement a system to identify and prepare Certified Trainers and Demonstration Sites;

(g) Participate with other NDN grantees in workshops and meetings arranged by the Secretary; and

(h) Cooperate with State Facilitator grantees and the Private School Facilitator grantee to carry out the activities in this section.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30614, Aug. 14, 1987. Redesignated at 54 FR 24650, June 8, 1989]

Subpart C—How Does the Secretary Make an Award?

§ 786.20 How does the Secretary evaluate an application?

The Secretary evaluates an application, including the information and materials submitted under § 786.10 according to the criteria in §§ 786.21 through 786.29.

(Authority: 20 U.S.C.)

[54 FR 24650, June 8, 1989]

§ 786.21 Selection criterion—innovative approach of exemplary education program. (15 points)

The Secretary reviews an application, including the information and materials submitted under § 786.10 to determine the extent to which the program's approach is innovative.

(Authority: 20 U.S.C. 2962)

[54 FR 24650, June 8, 1989]

§ 786.22 Selection criterion—accuracy of exemplary education program. (15 points)

The Secretary reviews an application, including the information and materials submitted under § 786.10 to determine the extent to which the program is accurate and up-to-date.

(Authority: 20 U.S.C. 2962)

[54 FR 24650, June 8, 1989]

§ 786.23 Selection criterion—plan of operation. (25 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(a) The quality of the design of the project (See § 786.16 for a description of the activities that a Developer Demonstrator project must propose.);

(b) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(c) How well the objectives of the project relate to the purpose of the program;

(d) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(e) The extent to which the applicant proposes dissemination strategies designed to meet specific characteristics of its program; and

(f) If the applicant is an LEA or SEA, the quality of the applicant's plan to provide an opportunity for adoption of the exemplary education program by private schools in accordance with § 786.31.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30614, Aug. 14, 1987. Redesignated and amended at 54 FR 24650, June 8, 1989]

§ 786.24 Selection criterion—quality of key personnel. (20 points)

(a) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The qualification of the project director;

(2) The qualifications of each of the other key personnel to be used on the project;

(3) The time that each person referred to in paragraphs (a) (1) and (2) of this section will commit to the project; and

(4) how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(b) To determine the qualifications of personnel referred to in paragraphs (a) (1) and (2) of this section, the Secretary considers—

(1) Experience and training in fields related to the objectives of the project; and

(2) Any other qualifications that pertain to the quality of the project.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30614, Aug. 14, 1987. Redesignated and amended at 54 FR 24650, June 8, 1989]

§ 786.25 Selection criterion—budget and cost effectiveness. (5 points)

(a) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(b) The Secretary considers the extent to which—

(1) The costs to an adopter for installing the program in a new setting would be reasonable; and

(2) The projected number of educational service providers that would adopt the program each year is appropriate for the budget requested.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30614, Aug. 14, 1987. Redesignated at 54 FR 24650, June 8, 1989]

§ 786.26 Selection criterion—evaluation plan. (10 points)

(a) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objectives and produce data that are quantifiable.

(b) The Secretary reviews each applicant's plans for evaluating—

(1) The quality and effectiveness of informational materials, of training and follow-up, and of internal management plans; and

(2) The effectiveness of adoptions of the program, including impact on the students or the changes in teacher or administrator behavior.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30614, Aug. 14, 1987. Redesignated and amended at 54 FR 24650, June 8, 1989]

§ 786.27 Selection criterion—adequacy of resources. (5 points)

The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment and supplies.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30614, Aug. 14, 1987. Redesignated at 54 FR 24650, June 8, 1989]

§ 786.28 Selection criterion—monitoring plan. (5 points)

The Secretary reviews each application to determine the extent to which the applicant clearly details plans for post-adoption monitoring of the implementation of the program and resulting benefits at the adoption sites.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30614, Aug. 14, 1987. Redesignated and amended at 54 FR 24650, June 8, 1989]

§ 786.29 What additional criteria exist for new awards?

In determining the order of selection under 34 CFR 75.217(d) for new Developer Demonstrator awards, the Secretary seeks diversity of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 2962)

[54 FR 24650, June 8, 1989]

§ 786.30 What additional criteria exist for continuation awards?

In addition to the criteria for making a continuation award under 34 CFR 75.253, the Secretary may consider the effectiveness of the project during the previous budget period in determining the amount of funding for the next budget period.

(Authority: 20 U.S.C. 3851)

[52 FR 30614, Aug. 14, 1987. Redesignated at 54 FR 24650, June 8, 1989]

Subpart D—What Conditions Must be Met by the Recipient of an Award?

§ 786.31 What disclaimers are required on printed material?

Developer Demonstrator projects must include disclaimers as follows on all instructional and curriculum materials reproduced or distributed with funds under this part—

(a) "The contents of this (insert type of publication; e.g., book, teacher's guide) were reproduced or are being distributed under a grant from the U.S. Department of Education. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government," and

(b) "If an education service provider uses funds under a program subject to Section 439 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232h) to adopt this project, the education service provider must comply with Part 98 of Title 34 of the Code of Federal Regulations (Student Rights in Research, Experimental Programs and Testing) which contains the regulations implementing that section of GEPA."

(Authority: 20 U.S.C. 3851)

[52 FR 30614, Aug. 14, 1987. Redesignated at 54 FR 24650, June 8, 1989]

§ 786.32 What are a recipient's responsibilities for serving students enrolled in nonprofit private schools?

(a) *Responsibilities of LEAs and SEAs.* A grant to an LEA or SEA is subject to the requirements in Section 586 of the Education Consolidation and Improvement Act of 1981 concerning—

(1) Consultation with nonprofit private school officials in developing the application; and

(2) The opportunity for participation by nonprofit private school children. The requirements for consultation are governed by paragraph (b) of this section and 34 CFR 76.652.

(b) *Consultation.* (1) An applicant shall comply with paragraph (b)(2) of this section if the following conditions are met:

(i) The applicant is an LEA or SEA.

(ii) The applicant applies for a Developer Demonstrator award.

(iii) The project proposed under the application is designed for adoption at elementary or secondary schools.

(2) The applicant shall consult with officials of nonprofit private elementary and secondary schools to ensure that the project can benefit children in those schools.

(c) *Participation.* An LEA or SEA that receives a Developer Demonstrator award designed for adoption at elementary and secondary schools shall, based on the consultation under paragraph (b)(1) of this section, ensure that nonprofit private elementary and secondary schools have an opportunity to adopt the program.

(d) *Other requirements.* An LEA or SEA grantee shall comply with the rules for subgrantees in EDGAR § 76.658, Funds not to benefit a private school.

(Authority: 20 U.S.C. 3851, 3862)

[52 FR 30614, Aug. 14, 1987. Redesignated at 54 FR 24650, June 8, 1989]

PART 787—NATIONAL DIFFUSION NETWORK: DISSEMINATION PROCESS PROJECTS

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Subpart B—How Does One Apply for an Award?

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787.16 What activities must an applicant propose to carry out if it receives an award?

Subpart C—How does the Secretary Make an Award?

787.20 How does the Secretary evaluate an application?
787.21 Selection criterion—innovative approach of exemplary education program. (15 points)
787.22 Selection criterion—accuracy of exemplary education program. (15 points)
787.23 Selection criterion—plan of operation. (25 points)
787.24 Selection criterion—quality of key personnel. (20 points)
787.25 Selection criterion—budget and cost-effectiveness. (5 points)
787.26 Selection criterion—evaluation plan. (10 points)
787.27 Selection criterion—adequacy of resources. (5 points)
787.28 Selection criterion—monitoring plan. (5 points)
787.29 What additional criteria exist for new awards?
787.30 What additional criteria exist for continuation awards?

Subpart [illegible]hat Conditions Must be Met by the Recipient of an Award?

787.31 What disclaimers are required on printed materials?

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787.32 What are a recipient's responsibilities for serving students enrolled in nonprofit private schools?

AUTHORITY: 20 U.S.C. 2962, unless otherwise noted.

SOURCE: 52 FR 30617, Aug. 14, 1987, unless otherwise noted.

Subpart A—General

§ 787.1 What is a Dissemination Process project?

A Dissemination Process project must provide information, instructional materials and services nationwide concerning specific content areas, bodies of research or fields of professional development, that will be of use to education service providers.

(Authority: 20 U.S.C. 3851)

§ 787.2 Who is eligible for an award?

Any public or nonprofit private agency, organization or institution that has in operation a dissemination process that has current Program Effectiveness Panel Approval may apply for a new Dissemination Process grant.

(Authority: 20 U.S.C. 3851)

[52 FR 30617, Aug. 14, 1987, as amended at 54 FR 24651, June 8, 1989]

§ 787.3 What priorities may the Secretary establish?

Each year the Secretary may announce in a notice published in the FEDERAL REGISTER the program priorities for which applicants may apply for assistance. The Secretary selects priorities in accordance with 34 CFR Part 786.3.

(Authority: 20 U.S.C. 3851)

§ 787.4 What regulations apply?

The following regulations apply to Dissemination Process projects:

(a) The regulations in 34 CFR Part 785.

(b) The regulations in 34 CFR 786.3.

(c) The regulations in this Part 787.

(Authority: 20 U.S.C. 3851)

Subpart B—How Does One Apply for an Award?

§ 787.10 What information and materials must an applicant submit to apply for an award?

To apply for an award, an applicant shall submit a description of the Dissemination Process, including—

(a) A representative sample of the information and instructional materials that would be disseminated through the Dissemination Process; and

(b) A description of any training to education service providers the program might offer, if appropriate, in support of the use of the materials or information described above.

(Authority: 20 U.S.C. 2962)

[54 FR 24651, June 8, 1989]

§ 787.11 What must an applicant submit for review by the PEP?

For PEP review of a dissemination process, an applicant shall submit to the Secretary—

(a) A description of its dissemination process;

(b) A description of the procedures and criteria for selecting information, materials and services to be disseminated and for judging that they are educationally significant; and

(c) A description of the procedures and criteria for evaluating qualitative and quantitative evidence of the effectiveness of information, instructional materials and services to be disseminated.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30617, Aug. 14, 1987, as amended at 53 FR 49148, Dec. 6, 1988. Redesignated at 54 FR 24651, June 8, 1989]

§ 787.12 How does the PEP review a Dissemination Process?

(a) The PEP reviews each dissemination process for educational effectiveness by examining the procedures and criteria for selecting information and instructional materials to be disseminated and for providing services according to the criteria in paragraph (d) of this section.

(b) The PEP awards up to 100 points for these criteria.

(c) The maximum score for each criterion is indicated in parentheses.

(d) In reviewing each dissemination process the PEP determines the following:

(1) *Evaluation design.* (50 points) The PEP determines the extent to which the evaluation design—

(i) Is appropriate for the program;

(ii) Is based on correct interpretation of relevant research and literature;

(iii) Demonstrates that a clear and attributable connection exists between the evidence of an educational effect and the program treatment; and

(iv) Addresses rival hypotheses.

(2) *Results.* (25 points) The PEP determines the extent to which the results indicate that the process is particularly effective relative to similar processes.

(3) *Replication.* (25 points) The PEP determines the extent to which the information, instructional materials and services can be used at other sites with the likelihood of achieving similar results.

(Authority: 20 U.S.C. 3851)

[52 FR 30617, Aug. 14, 1987. Redesignated and amended at 54 FR 24651, June 8, 1989]

§ 787.13 How is PEP approval granted?

PEP approval is granted if the PEP has given the procedures and criteria a score of at least 20 points for the criterion in § 787.12(d)(2) (*Results*) and a total score of at least 70 points.

(Authority: 20 U.S.C. 2962)

[54 FR 24651, June 8, 1989]

§ 787.14 How long does PEP approval last?

PEP approval remains in effect for six years from the date of approval.

(Authority: 20 U.S.C. 2962)

[54 FR 24651, June 8, 1989]

§ 787.15 How long does JDRP approval last?

JDRP approval remains in effect for six years from the date of approval.

(Authority: 20 U.S.C. 2962)

[54 FR 24651, June 8, 1989]

§ 787.16 What activities must an applicant propose to carry out if it receives an award?

A Dissemination Process Project must—

(a) Develop and provide upon request of an education service provider, descriptions of the information, material and services concerning the content areas, fields of professional development or bodies of research that are available through the dissemination process, for education service providers throughout the Nation to use in becoming familiar with the grantee's project;

(b) Provide upon request the information, material and services described in paragraph (a) of this section;

(c) Provide, if appropriate, training in support of the use of the information, materials and services provided;

(d) Evaluate the quality and effectiveness of the dissemination process as specified in the evaluation design for the project;

(e) Maintain records during the grant period concerning the dissemination of information and materials, and the provision of services;

(f) Monitor and evaluate the extent of use by teachers and students and the educational results obtained through use of the information, materials and services selected by education service providers;

(g) Participate with other NDN grantees in workshops and meetings arranged by the Secretary; and

(h) Cooperate with State Facilitator grantees and the Private School Facilitator project to carry out the activities in this section.

(Approved by Office of Management and Budget under control number 1850–0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30617, Aug. 14, 1987. Redesignated at 54 FR 24651, June 8, 1989]

Subpart C—How Does the Secretary Make an Award?

§ 787.20 How does the Secretary evaluate an application?

The Secretary evaluates an application, including the information and materials submitted under § 787.10 according to the criteria in §§ 787.21 through 787.28.

(Authority: 20 U.S.C. 2962)

[54 FR 24651, June 8, 1989]

§ 787.21 Selection criterion—innovative approach of exemplary education program. (15 points)

The Secretary reviews an application, including the information and materials submitted under § 787.10 to determine the extent to which the program's approach is innovative.

(Authority: 20 U.S.C. 2962)

[54 FR 24651, June 8, 1989]

§ 787.22 Selection criterion—accuracy of exemplary education program. (15 points)

The Secretary reviews an application, including the information and materials submitted under § 787.10 to determine the extent to which the program is accurate and up-to-date.

(Authority: 20 U.S.C. 2962)

[54 FR 24651, June 8, 1989]

§ 787.23 Selection criterion—plan of operation. (25 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(a) The quality of the design of the project (See § 787.16 for a description of the activities that a Dissemination Process project must propose.);

(b) A clear description of the information and instructional materials to be disseminated, and the services to be provided;

(c) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(d) How well the objectives of the project relate to the purpose of the program;

(e) The quality of the applicant's plans to use its resources and personnel to achieve each objective;

(f) The extent to which the applicant proposes dissemination strategies designed to meet specific characteristics of its program.

(g) If the applicant is an LEA and SEA, the quality of the applicant's plans to provide an opportunity for private schools to use the information, instructional materials and services.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30617, Aug. 14, 1987. Redesignated and amended at 54 FR 24651, June 8, 1989]

§ 787.24 Selection criterion—quality of key personnel. (20 points)

(a) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) the qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each person referred to in paragraphs (a) (1) and (2) of this section plans to commit to the project; and

(4) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(b) To determine the qualifications of personnel referred to under paragraphs (a) (1) and (2) of this section, the Secretary considers—

(1) Experience and training in fields related to the objectives of the project; and

(2) Any other qualifications that pertain to the quality of the project.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30617, Aug. 14, 1987. Redesignated and amended at 54 FR 24651, June 8, 1989]

§ 787.25 Selection criterion—budget and cost effectiveness. (5 points)

The Secretary reviews each application to determine the extent to which—

(a) The budget is adequate to support the project; and

(b) Cost are reasonable in relation to the objectives of the project;

(c) The estimated cost to the adopter for purchasing or using the materials, information or services that are available through the Dissemination Process is reasonable.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30617, Aug. 14, 1987. Redesignated and amended at 54 FR 24651, June 8, 1989]

§ 787.26 Selection criterion—evaluation plan. (10 points)

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(a) Are appropriate for the project;

(b) To the extent possible, are objective and produce data that are quantifiable; and

(c) Are appropriate to evaluate—

(1) The quality and effectiveness of informational materials, of any training provided and follow-up, and of internal management plans; and

(2) The use and effectiveness of the materials and information provided to education service providers.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30617, Aug. 14, 1987. Redesignated and amended at 54 FR 24651, June 8, 1989]

§ 787.27 Selection criterion—adequacy of resources. (5 points)

The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30617, Aug. 14, 1987. Redesignated and amended at 54 FR 24651, June 8, 1989]

§ 787.28 Selection criterion—monitoring plan. (5 points).

The Secretary reviews each application to detemine the extent to which the applicant clearly details plans that show promise of effective management of the project, including monitoring the use of materials and information provided through the Dissemination Process, and resulting benefits to educational service providers.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

[52 FR 30617, Aug. 14, 1987. Redesignated at 54 FR 24651, June 8, 1989]

§ 787.29 What additional criteria exist for new awards?

In determining the order of selection under 34 CFR 75.217(d) for new Dissemination Process awards, the Secretary seeks diversity of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 2962)

[54 FR 24651, June 8, 1989]

§ 787.30 What additional criteria exist for continuation awards?

If the Secretary makes a continuation award under § 75.253, the Secretary may consider the effectiveness of the project during the previous budget period in determining the amount of funding for the next budget period.

(Authority: 20 U.S.C. 3851)

[52 FR 30617, Aug. 14, 1987. Redesignated at 54 FR 24651, June 8, 1989]

Subpart D—What Conditions Must be Met by the Recipient of an Award?

§ 787.31 What disclaimers are required on printed materials?

Dissemination Process projects must include disclaimers as follows on all instructional and curriculum materials reproduced or distributed with funds under this part:

(a) "The contents of this (insert type of publication; e.g., book, teacher's guide) were reproduced or are being distributed under grant from the U.S. Department of Education. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government;" and

(b) "If an education service provider uses funds under a program subjecte to Section 439 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232h) to pay for information, instructional materials or services provided by this project, the education service provider must comply with Part 98 of Title 34 of the Code of Federal Regulations (Student Rights in Research, Experimental Programs and Testing) which contains the regulations implementing that section of GEPA."

(Authority: 20 U.S.C. 3851)

[52 FR 30617, Aug. 14, 1987. Redesignated at 54 FR 24651, June 8, 1989]

§ 787.32 What are a recipient's responsibilities for serving students enrolled in nonprofit private schools?

(a) *Responsibilities of LEAs and SEAs.* A grant to an LEA or SEA is subject to the requirements in Section 586 of the Education Consolidation and Improvement Act of 1981 concerning—

(1) Consultation with nonprofit private school officials in developing the application; and

(2) The opportunity for participation by nonprofit private school children. The requirements for consultation are governed by paragraph (b) of this section and 34 CFR 76.652 of EDGAR.

(b) *Consultation.* (1) An applicant shall comply with paragraph (b)(2) of this section if the following conditions are met:

(i) The applicant is an LEA or SEA;

(ii) The applicant applies for a Dissemination Process award;

(iii) The information, materials and services to be provided through the dissemination process would be used in elementary or secondary schools.

(2) The applicant shall consult with officials of nonprofit private elementary and secondary schools to ensure that the project can benefit children in those schools.

(c) *Participation.* An LEA or SEA that receives a Dissemination Process award designed to provide information, materials and services to elementary and secondary schools shall, based on the consultation under paragraph (b)(1) of this section, ensure that nonprofit elementary and secondary schools have an opportunity to use the information, instructional materials and services.

(d) *Other requirements.* An LEA or SEA grantee shall comply with the rules for subgrantees in EDGAR § 76.658, Funds not to benefit a private school.

(Authority: 20 U.S.C. 3851, 3862)

[52 FR 30617, Aug. 14, 1987. Redesignated at 54 FR 24651, June 8, 1989]

PART 788—NATIONAL DIFFUSION NETWORK: STATE FACILITATOR PROJECTS

Subpart A—General

Sec.
788.1 What is a State Facilitator project?
788.2 Who is eligible for an award?
788.3 What regulations apply?

Subpart B—How Does One Apply for an Award?

788.10 What activities must an applicant propose to carry out if it receives an award?

Subpart C—How Does the Secretary Make an Award?

788.20 How many awards does the Secretary make in each State?
788.21 How does the Secretary evaluate an application?
788.22 Selection criterion—plan of operation.
788.23 Selection criterion—quality of key personnel.
788.24 Selection criterion—budget and cost effectiveness.
788.25 Selection criterion—evaluation plan.
788.26 Selection criterion—adequacy of resources.
788.27 Selection criterion—monitoring plan.
788.28 Selection criterion—consultation during application.

Sec.
788.29 Selection criterion—consultation and participation during project.
788.30 Selection criterion—innovative dissemination strategies.
788.31 Selection criterion—provision of information about other programs.
788.32 What additional criteria exist for continuation awards?

Subpart D—What Conditions Must Be Met by the Recipient of an Award?

788.40 What are a recipient's responsibilities to students enrolled in nonprofit private schools?

AUTHORITY: 20 U.S.C. 3851, unless otherwise noted.

SOURCE: 52 FR 30620, Aug. 14, 1987, unless otherwise noted.

Subpart A—General

§ 788.1 What is a State Facilitator Project?

A State Facilitator Project must disseminate a wide variety of exemplary education programs within the particular State served by each project.

(Authority: 20 U.S.C. 3851)

§ 788.2 Who is eligible for an award?

Any public or nonprofit private agency, organization, or institution located in the State to be served may apply for a State Facilitator award.

(Authority: 20 U.S.C. 3851)

§ 788.3 What regulations apply?

The following regulations apply to State Facilitator projects:

(a) The regulations in 34 CFR Part 785.

(b) The regulations in this Part 788.

(Authority: 20 U.S.C. 3851)

Subpart B—How Does One Apply for an Award?

§ 788.10 What activities must an applicant propose to carry out if it receives an award?

A State Facilitator project must—

(a) Inform public and private education service providers about the availability of all exemplary education programs in the National Diffusion Network;

(b) Assist education service providers to select exemplary education programs to meet their needs;

(c) Negotiate adoption agreements with Developer Demonstrator and Dissemination Process grantees and education service providers;

(d) Arrange for Developer Demonstrator and Dissemination Process grantees to provide training and follow-up services when requested by education service providers;

(e) Arrange for the selection and training of Local Facilitators;

(f) Assist in the identification and preparation of Certified Trainers and Demonstration Sites;

(g) Maintain records during the grant period concerning the exemplary education programs adopted in the State, including demographic data and program retention rates;

(h) Monitor and evaluate the activities of the State Facilitator project;

(i) Participate with other NDN grantees in workshops and meetings arranged by the Secretary; 1(j) Cooperate with Developer Demonstrator grantees, Dissemination Process grantees and the Private School Facilitator grantee to carry out the activities in this section; and

(k) Disseminate information about ERIC, Research and Development Centers and Regional Educational Laboratories, and educational excellence recognition efforts, (such as federally and privately funded programs that identify outstanding educators, students, and schools).

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

Subpart C—How Does the Secretary Make an Award?

§ 788.20 How many awards does the Secretary make in each State?

The Secretary makes one award in each State.

(Authority: 20 U.S.C. 3851)

§ 788.21 How does the Secretary evaluate an application?

The Secretary evaluates an application according to the criteria in §§ 788.22 through 788.32.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 788.22 Selection criterion—plan of operation. (15 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including,—

(a) The quality of the design of the project (See § 788.10 for a description of the activities that a State Facilitator must propose.);

(b) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(c) How well the objectives of the project relate to the purpose of the program;

(d) The quality of the applicant's plans to use its resources and personnel to achieve each objective;

(e) If the applicant is an LEA or SEA, the quality of the applicant's plans to provide an opportunity for participation of private schools in accordance with § 788.40.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 788.23 Selection criterion—quality of key personnel. (20 points)

(a) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project:

(3) The time that each person referred to in paragraph (a) of this section will commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(b) To determine the qualifications of personnel referred to in paragraphs (a) (1) and (2) of this section, the Secretary considers—

(1) Experience and training in fields related to the objectives of the project; and

(2) Any other qualifications that pertain to the quality of the project.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 788.24 Selection criterion—budget and cost effectiveness. (5 points)

The Secretary reviews each application to determine the extent to which—

(a) The budget is adequate to support the project; and

(b) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 788.25 Selection criterion—evaluation plan. (10 points)

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(a) Are appropriate to the project; and

(b) To the extent possible, are objective and produce data that are quantifiable.

Cross-Reference: See 34 CFR 75.590 Evaluation by the grantee.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 788.26 Selection criterion—adequacy of resources. (5 points)

The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment and supplies.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 788.27 Selection criterion—monitoring plan. (15 points)

The Secretary reviews each application to determine the extent to which the applicant clearly details plans to monitor and assist sites that adopt the programs, and provide follow-up services after training.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 788.28 Selection criterion—consultation during application. (5 points)

The Secretary reviews each application to determine the extent to which the applicant, in developing its application, has consulted with the SEA, LEAs, Institutions of Higher Education, private schools and other educational service providers in the State to be served.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 788.29 Selection criterion—consultation and participation during project. (5 points)

The Secretary reviews each application to determine the extent to which the applicant, in carrying out the project activities, provides for consultation with, and participation of the SEA, LEAs, Institutions of Higher Education, private schools and other education service providers in the State.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 788.30 Selection criterion—innovative dissemination strategies. (10 points)

The Secretary reviews each application to determine the extent to which the applicant proposes innovative dissemination strategies.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 788.31 Selection criterion—provision of information about other programs. (10 points)

The Secretary reviews each application to determine the extent to which the applicant has the capacity to provide information about ERIC, Research and Development Centers and Regional Educational Laboratories, and educational excellence recognition efforts (such as federally and privately funded programs that identify outstanding educators, students, and schools), to educational personnel throughout the State.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 788.32 What additional criteria exist for continuation awards?

If the Secretary makes a continuation award under § 75.253, the Secretary may consider the effectiveness of the project during the previous budget period in determining the amount of funding for the next budget period.

(Authority: 20 U.S.C. 3851)

Subpart D—What Conditions Must be Met by the Recipient of an Award?

§ 788.40 What are a recipient's responsibilities to students enrolled in nonprofit private schools?

(a) *Responsibilities of LEAs and SEAs.* A grant to an LEA or SEA is subject to the requirements in § 586 of the Education Consolidation and Improvement Act of 1981 concerning—

(1) Consultation with nonprofit private school officials in developing the application; and

(2) The opportunity for participation by nonprofit private school children. The requirements for consultation are governed by paragraph (b) of this section and § 76.652 of EDGAR.

(b) *Consultation.* (1) An applicant shall comply with paragraph (b)(2) of this section if the following conditions are met:

(i) The applicant is an LEA or SEA.

(ii) The applicant applies for a State Facilitator award.

(2) The applicant shall consult with officials of nonprofit private elementary and secondary schools in the State served by the project to determine appropriate strategies to ensure that children in those schools can benefit from the project.

(c) *Participation.* An LEA or SEA that receives a State Facilitator grant shall use the strategies developed under paragraph (b)(1) of this section to ensure that teachers and administrators from nonprofit private elementary and secondary schools have an opportunity to participate.

(d) *Other requirements.* An LEA or SEA grantee shall comply with the rules for subgrantees in EDGAR § 76.658, Funds not to benefit a private school.

(Authority: 20 U.S.C. 3851, 3862)

PART 789—NATIONAL DIFFUSION NETWORK: PRIVATE SCHOOL FACILITATOR PROJECT

Subpart A—General

Sec.
789.1 What is a Private School Facilitator project?
789.2 Who is eligible for an award?
789.3 What regulations apply?

Subpart B—How Does One Apply for an Award?

789.10 What activities must an applicant propose to carry out if it receives an award?

Subpart C—How Does the Secretary Make an Award?

789.20 How does the Secretary evaluate an application?
789.21 Selection criterion—plan of operation.
789.22 Selection criterion—quality of key personnel.
789.23 Selection criterion—budget and cost effectiveness.
789.24 Selection criterion—evaluation plan.
Sec.
789.25 Selection criterion—adequacy of resources.
789.26 Selection criterion—consultation during application.
789.27 Selection criterion—consultation and participation during project.
789.28 Selection criterion—innovative dissemination strategies.
789.29 Selection criterion—previous experience.
789.30 Selection criterion—provision of information about other programs.
789.31 What additional criteria exist for continuation awards?

AUTHORITY: 20 U.S.C. 3851, unless otherwise noted.

SOURCE: 52 FR 30622, Aug. 14, 1987, unless otherwise noted.

Subpart A—General

§ 789.1 What is a Private School Facilitator Project?

A Private School Facilitator project must disseminate exemplary education programs to private schools nationwide.

(Authority: 20 U.S.C. 3851)

§ 789.2 Who is eligible for an award?

Any public or nonprofit private agency, organization, or institution may apply for a Private School Facilitator grant to serve private schools nationwide.

(Authority: 20 U.S.C. 3851)

§ 789.3 What regulations apply?

The following regulations apply to the Private School Facilitator project:

(a) The regulations in 34 CFR Part 785.

(b) The regulations in this Part 789.

(Authority: 20 U.S.C. 3851)

Subpart B—How Does One Apply for an Award?

§ 789.10 What activities must an applicant propose to carry out if it receives an award?

The Private School Facilitator project must—

(a) Inform private schools throughout the National about the availability of exemplary education programs in the National Diffusion Network;

(b) Assist private education service providers to select exemplary education programs to meet their needs;

(c) Negotiate adoption agreements with Developer Demonstrator and Dissemination Process grantees and private education service providers;

(d) Arrange for Developer Demonstrator and Dissemination Process grantees to provide information, training and follow-up services to staff members of private schools if requested;

(e) Arrange for the selection and training of local facilitators;

(f) Assist in the identification and training of Certified Trainers;

(g) Maintain records during the grant period concerning the exemplary education programs adopted by private schools, including demographic data and program retention rates;

(h) Monitor and evaluate the activities of the Private School Facilitator project;

(i) Participate with other NDN grantees in workshops and meetings arranged by the Secretary;

(j) Cooperate with Developer Demonstrator grantees, Dissemination Process grantees and State facilitator grantees in establishing linkages to private schools throughout the Nation; and

(k) Disseminate information about ERIC, Research and Development Centers and Regional Educational Laboratories, and educational excellence recognition efforts (such as federally and privately funded programs that identify outstanding educators, students, and schools).

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

Subpart C—How Does the Secretary Make an Award?

§ 789.20 How does the Secretary evaluate an application?

The Secretary evaluates an application for a Private School Facilitator award according to the criteria in §§ 789.21 through 789.30.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 789.21 Selection criterion—plan of operation. (15 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(a) The quality of the design of the project (See § 789.10 for a description of each of the activities that the Private School Facilitator must propose.);

(b) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(c) How well the objectives of the project relate to the purpose of the program;

(d) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(e) The extent to which the applicant clearly details plans to monitor and assist sites that adopt programs, and provide follow-up services after training.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 789.22 Selection criterion—quality of key personnel. (10 points)

(a) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each person referred to in paragraphs (a) (1) and (2) of this section will commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(b) To determine qualifications of personnel referred to under paragraphs (a)(1) and (2) of this section, the Secretary considers—

(1) Experience and training in fields related to the objectives of the project; and

(2) Any other qualifications that pertain to the quality of the project.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 789.23 Selection criterion—budget and cost effectiveness. (10 points)

The Secretary reviews each application to determine the extent to which—

(a) The budget is adequate to support the project and is cost effective; and

(b) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 789.24 Selection criterion—evaluation plan. (10 points)

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(a) The applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable, including evaluation of the impact of the adoptions in private schools; and

(b) The applicant will seek the assistance of national experts and professional associations concerned with private schools in designing and carrying out evaluation activities.

CROSS-REFERENCE: See 34 CFR 75.590 Evaluation by the grantee.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 789.25 Selection criterion—adequacy of resources. (5 points)

The Secretary reviews each application to detemine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment and supplies.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 789.26 Selection criterion—consultation during application. (5 points)

The Secretary reviews each application to determine the extent to which the applicant, in developing its application, has consulted with diverse private school educators.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 789.27 Selection criterion—consultation and participation during project. (5 points)

The Secretary reviews each application to determine the extent to which the applicant, in carrying out project activities, provides for consultation with, and participation of diverse private school educators.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 789.28 Selection criterion—innovative dissemination strategies. (10 points)

The Secretary reviews each application to detemine the extent to which the applicant proposes innovative dissemination strategies.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 789.29 Selection criterion—previous experience. (20 points)

The Secretary reviews each application to determine the extent to which the applicant has had previous experience in successfully working with and providing services to many different types of private schools nationwide.

(Authority: 20 U.S.C. 3851)

§ 789.30 Selection criterion—provision of information about other programs. (10 points)

The Secretary reviews each application to determine the extent to which the applicant has the capacity to provide information about ERIC, Research and Development Centers and Regional Educational Laboratories, and schools, educators, and students recognized through federally and privately funded educational excellence recognition efforts, to educational personnel in private schools nationwide.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

§ 789.31 What additional criteria exist for continuation awards?

If the Secretary makes a continuation award under § 75.253, the Secretary may consider the effectiveness of the project during the previous budget period in determining the amount of funding for the next budget period.

(Approved by the Office of Management and Budget under control number 1850-0086)

(Authority: 20 U.S.C. 3851)

PART 790—TERRITORIAL TEACHER TRAINING ASSISTANCE

Subpart A—General

Sec.
790.1 Description of the Territorial Teacher Training Assistance Program.
790.2 Eligible parties.
790.3 Regulations that apply to the Territorial Teacher Training Assistance Program.
790.4 Definitions.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

790.10 Project activities.

Sec.

Subpart C—How Does One Apply for a Gr

790.20 How to apply for funds.

Subpart D—How Is a Grant Made?

790.30 How applications are reviewed.
790.31 How funds are alloted.

Subpart E—What Conditions Must be Met by Grantee?

790.40 Allowable costs.
790.41 Limitations on costs.
790.42 Participation of private scho teachers.

Authority: 20 U.S.C. 3142, unless othe wise noted.

Source: 45 FR 53996, Aug. 13, 1980, unle otherwise noted. Redesignated at 45 F 77369, Nov. 21, 1980.

Subpart A—General

§ 790.1 Description of the Territoria Teacher Training Assistance Program.

The Territorial Teacher Training Assistance Program provides Federal assistance for the training of teachers in schools in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Virgin Islands, and, on a transitional basis, the entities of the former Trust Territory of the Pacific Islands.

(Authority: 20 U.S.C. 3142; 48 U.S.C. 1681)

[53 FR 47954, Nov. 29, 1988]

§ 790.2 Eligible parties.

(a) Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Republic of Palau, provided it remains a trust territory, are each eligible to receive a grant. The future eligibility of the Republic of Palau will be determined by the provisions of the Compact of Free Association.

(b) The Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands are each eligible to receive a grant in fiscal year 1989. Each grant is limited to an amount determined under the declining funding cap provision at section 105(i)(2) of the Compact of Free Association.

(c) If a jurisdiction desires a grant, its SEA—either alone or in conjunction with an IHE—shall submit an application. If an SEA submits an application in conjunction with an IHE, the SEA remains fully responsible for the administration of the project.

(Approved by the Office of Management and Budget under Control Number 1850-0619)

(Authority: 20 U.S.C. 3142; 48 U.S.C. 1681)

[53 FR 47954, Nov. 29, 1988]

§ 790.3 Regulations that apply to the Territorial Teacher Training Assistance Program.

The following regulations apply to grants under the Territorial Teacher Training Assistance Program:

(a) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), Part 79 (Intergovernmental Review of Department of Education Programs and Activities) and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(b) The regulations in this Part 790.

(Authority: 20 U.S.C. 3142)

[53 FR 47954, Nov. 29, 1988]

§ 790.4 Definitions.

(a) *Definitions in EDGAR.* The following terms in this part are defined in 34 CFR Part 77: Applicant, Application, Award, Budget, EDGAR, Grant, Grantee, Nonprofit, Private, Project, Public, State educational agency (SEA).

(b) *Specific program definitions.* As used in these regulations—

"Teacher" means a person who has the primary responsibility for teaching elementary and secondary students in an educational institution, whether public or private. The term includes persons who provide instruction to adults in courses traditionally provided to students in elementary and secondary schools.

"Nonindigenous contract teacher" means a teacher who serves on a contract basis, who has been employed in the school system for less than three years, and who was not at the time of entering the contract, a resident of the territorial jurisdiction in which the service will be performed.

(c) *Other definitions.* "Institution of higher education" is defined in the Higher Education Act of 1965 (Pub. L. 89-329), as amended.

(Authority: Sec. 1525, Pub. L. 95-561; 20 U.S.C. 1141)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 790.10 Project activities.

(a) Projects funded under this part provide for the training of teachers in the five territorial jurisdictions who teach—

(1) Students in grades kindergarten through 12 in public and nonprofit private schools; or

(2) Adults in courses traditionally provided by elementary or secondary schools.

(b) All activities must be directly related to teaching. Activities that may be funded include, but are not limited to, the following:

(1) In-Service teacher training in—

(i) Basic Skills development; or

(ii) Specific subject areas.

(2) Curriculum development.

(3) Use of instructional materials or equipment.

(4) Classroom management.

(5) Training for teachers to achieve full certification under the appropriate territorial requirements.

(c) Nonindigenous contract teachers may receive only that training directly necessary for teaching within the territorial schools, rather than training concerned with general teacher competency.

(d) Except in unusual circumstances, as determined by the Secretary, the Secretary does not approve training to be provided outside the geographical limits of the territory(ies) involved.

(Authority: Sec. 1525, Pub. L. 95-561)

Subpart C—How Does One Apply for a Grant?

§ 790.20 How to apply for funds.

The Secretary makes a grant only if the applicant submits an application meeting the following requirements:

(a) For the first year of the program an application must contain—

(1) A needs assessment defining teacher training needs of both public and private schools in the jurisidiction covered by the application;

(2) A four-year plan explaining the methods to be employed and activities to be conducted to meet the teacher training needs identified in paragraph (a)(1) of this section;

(3) A detailed explanation of the goals, objectives, and activities to be carried out in the first year of the program;

(4) A detailed proposed budget for the accomplishment of the activities described in paragraph (a)(3) of this section for the fiscal year for which the application is submitted; and

(5) The estimated funding needs for each subsequent year of the four-year plan.

(b) For grantees eligible to receive grants in subsequent years under § 790.2 (a) and (b), for each subsequent year of the program, an application must contain—

(1) Any revisions to the needs assessment statement or amendments to the four-year plan statement submitted under paragraphs (a) (1) and (2) of this section;

(2) A statement describing the extent to which the previous year's project met the goals and objectives set forth in that year's application;

(3) A detailed explanation of the activities to be carried out for the current project year;

(4) A detailed proposed budget for the current project year; and

(5) An updated estimate of funding needs for the subsequent years of the project.

(Approved by the Office of Managemen and Budget under Control Number 185 0619)

(Authority: 20 U.S.C. 3142)

[53 FR 47954, Nov. 29, 1988, as amended a 53 FR 49148, Dec. 6, 1988]

Subpart D—How Is a Grant Made?

§ 790.30 How applications are reviewed.

The Secretary reviews an applicatio to ensure that—

(a) The proposed objectives and activities respond to the needs assessment stated in the application; and

(b) The proposed budget is applicable to these needs.

§ 790.31 How funds are alloted.

(a) The Secretary allots funds to each territory on the basis of the identified needs and a review of the proposed activities and budget in its application.

(b)(1) If the total determined allotments to the territories exceed the total amount of funds appropriated, the Secretary reduces each allotment.

(2) However, the Secretary allots to each territory whose application for funds is approved at least five percent of each fiscal year's appropriation.

(Authority: Sec. 1525, Pub. L. 95-561)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 790.40 Allowable costs.

(a) Funds under this part may be used to cover all or part of the cost of establishing and implementing a teacher training assistance project.

(b) These costs may include, but are not limited to—

(1) Research material and resources;

(2) Consultants; and

(3) Training of project staff.

[45 FR 53996, Aug. 13, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, and amended at 53 FR 47954, Nov. 29, 1988]

§ 790.41 Limitations on costs.

(a) Funds received under this program may not be used for the training of teachers outside the geographic limits of the territory(ies) involved, except—

(1) In unusual circumstances as determined by the Secretary; and

(2) With prior written approval of the Secretary.

(b) The application must describe the circumstances that require training outside the geographic limits of the territories if funds are requested for that purpose.

(Authority: Sec. 1525, Pub. L. 95-561)

§ 790.42 Participation of private school teachers.

A grantee shall provide teachers in private nonprofit schools in the area served by the project an opportunity to participate in the training on a basis comparable to that provided for public school teachers.

(Authority: Sec. 1525, Pub. L. 95-561)

[45 FR 53996, Aug. 13, 1980. Redesignated at 45 FR 77369, Nov. 21, 1980, and amended at 53 FR 47955, Nov. 29, 1988]

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The Department of Education Organization Act (Pub. L. 96-88) established the Department of Education (ED) as a new executive department.

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(a) Subtitle A consists of Parts 4, 5, 5b, 6, 7, 8, 10, 11, 12, 15, 17, 30, 35, 50, 63, 64, 67, 73, 74, and 79.

(b) Chapter I consists of Parts 100, 101, 104, and 106.

On November 21, 1980 (45 FR 77368), various parts appearing in Title 24, Chapter II, and Title 45, Chapters I, XIII, XIV, and XV, were transferred into Title 34 and redesignated. The following table shows the old part numbers as they appear in Titles 24 and 45 and the new part numbers as they appear in Title 34.

45 CFR Old Part Numbers	34 CFR New Part Numbers
Chapter I	
100a	75
100b	76
100c	77
100d	78
101	621
104	400
105.1–105.507	408
105.601–105.607	525
105.611–105.617	526
105.621–105.627	527
111	218
112	219
113	220
114	221
115	222
116	200
116a	201
116b	302
116c	203
116d	204
119	208
120	206
121a	300
121b	305
121c	307
121d	309
121e	315
121f	318
121g	320
121h	324
121k	336
121m	301
121o	330
121p	331
121q	332
121r	333
122a	537
123	500
123a	501
123b	502
123c	503

45 CFR Old Part Numbers	34 CFR New Part Numbers
123d	504
123e	510
123f	514
123g	520
123h	515
123i	505
130	770
131	773
132	778
133	777
134	774
136	775
137	606
146	655
146a	667
147	Removed
148	662
149	603
150	639
151	790
153	Removed
154	644
155	645
157	646
158	215
159	643
160f	745
161	295
161a	296
161b	752
161c	753
161e	755
161f	419
161g	757
161h	758
161l	647
161m	763
162	765
162a	766
162b	767
162c	768
163	440
163a	441

Redesignation Table

45 CFR Old Part Numbers	34 CFR New Part Numbers
163b	442
163c	443
163d	444
164	726
166	425
166a	426
166b	431
166c	432
168	668
169	624
170	617
172	793
173	610
174	674
175	675
176	676
177	682
178	686
178a	695
179	648
180	270
182	631
182a	740
184	769
185	280
186	250
186a	251
186b	252
186c	253
186d	254
186e	255
186f	256
186g	257
186h	258
186i	259
186j	260
186k	261
186l	262
187	263
189	629
190	690
191	211
192	692
193	796

45 CFR Old Part Numbers	34 CFR New Part Numbers
194	649
195	345
195a	346
195b	347
196	650
197	240
198	241
199a	605
Chapter XIII	
1361	361
1362	362
1369	369
1370	370
Chapter XIV	
1400	700
1403	701
1410	702
1430	703
1440	705
1450	708
1451	710
1460	795
1470	714
1480	716
1490	718
1495	720
Chapter XV	
1501	730

24 CFR Old Part Numbers	34 CFR New Part Numbers
Chapter II	
279	614

List of CFR Sections Affected Formerly Appearing in Title 34, Government Management

Title 34, Government Management was vacated and existing regulations transferred to Title 5, Part 1310, at 44 FR 60286, Oct. 19, 1979.

All sections in former Title 34 of the Code of Federal Regulations which were affected by documents published in the Federal Register since December 7, 1973, are enumerated in the following list. Entries indicate the nature of changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

1973

34 CFR	38 FR Page
Title established	33769
Chapter II	
Chapter established	33769
200 Added	33769
211 Added	34731
231 Added	35464
251 Added	33770
271 Added	34733

1974

34 CFR	39 FR Page
Chapter II	
212 Added	26641
212.4 (c)(5)(ii corrected	27322
(c)(4) and (5) revised	32559
213 Added	32134
232 Added	2606
232 Appendix B amended	10132
Appendix C amended	10132
Appendix A revised	41250
Appendix B revised	41251
Appendix C revised	41251
233 Added	37367
252 Added	1582
253 Added	797
253.6 Revised	24632
254 Added	1014
255 Added	27133
256 Added	35787
257 Added	42355
281 Added	8615
282 Added	29355

1975

34 CFR	40 FR Page
Chapter II	
232.4 Revised	3290
232.5 Revised	3290
232.8-1 Added	3290
232 Appendix C amended	32329
233 Appendix A amended	30263
234 Added	6780
236 Added	48346
256 Appendix O amended	26031
256.5 (a) revised	26031
256 Appendix M amended (Standard Form 424)	54373
256.4 Revised	51038
256.5 (c) and (d) revised	51038

1976

34 CFR	41 FR Page
Chapter II	
Chapter heading revised	52454
200 (Subchapter A) Removed	52454
211—213 (Subchapter B) Removed	52454
234 Removed	52454
235 Added	755
Heading corrected	54487
236 Removed	52454
251—257 (Subchapter D) Removed	52454

1977

34 CFR	42 FR Page
Chapter I	
Chapter established	12

34 CFR—Continued

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231 Removed....................................40695

232 Removed....................................56121

232 Appendix A redesignated and revised as 41 CFR Subpart 101-38.13....................................1477

233 Redesignated as 41 CFR 101-6.100—101.6.112-1 (Subpart 101-6.1) and revised........14097

271 Removed......................35833, 35853

1978

34 CFR

43 FR Page

Chapter II

235 Removed....................................2722

34 CFR—Continued

43 FR Page

Chapter II—Continued

281 Redesignated as 41 CFR 101-36.501—101-36.508 (101-36.5) in part.................................27190

282 Redesignated as 41 CFR 101-35.201—101-35.210 (101-35.2) in part.................................27190

1979

34 CFR

44 FR Page

Title vacated and reserved............60286

Chapter I

Chapter removed and redesignated as 5 CFR Part 1310 (Subchapter B)....................................60286

1 Added...37913

Transferred Regulations—Public Welfare

List of CFR Sections Affected

At 45 FR 77368, Nov. 21, 1980, various parts appearing in Title 45 Chapters I, XIII, XIV, and XV were transferred into Title 34 and redesignated. All changes in former Chapters I, XIII, XIV, and XV which were made by documents published in the FEDERAL REGISTER from January 1, 1973, through Sept. 30, 1981, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected. 1949-1963, and 1964-1972," published in three separate volumes.

1973

45 CFR

	38 FR Page
Chapter I	
100a Added	30662
100b Added	30679
100c Added	30691
101—190 Subchapter B heading added	30661
111.1 (a), (d), and (e) removed	30658
112.1 (b) and (h) removed	30659
113.1 (b) and (f) removed	30659
114.1 (b), (g), and (v) removed	30659
115.3 (b) and (d) removed	36059
116.1 (e), (j), (k), (m), (t), (u), (x), (y) and (bb) removed	30659
116.21 (a), (b), (c), (d), and (e) removed	30659
116.26 Revised	17127
116.42 Removed	30659
116.46 Removed	30659
116.47 Removed	30659
116.48 Removed	30659
116.53 (a), (b), (c), and (e) removed	30659
116.54 Removed	30659
116.55 Removed	30659
116.56 Removed	30659
116.57 Removed	30659
119.1 (c), (d), (e), (f), (g), (i), (k), and (l) removed	30659
119.7 Removed	30659
119.8 Introductory test revised	30659
119.21 Removed	30659
119.22 (b) removed	30659
119.23 Removed	30659
119.24 Removed	30659
119.25 Removed	30659
119.26 Removed	30659
119.27 Removed	30659

45 CFR—Continued

Chapter I—Continued	38 FR Page
119.28 Removed	30659
119.40—119.52 (Subpart D) Removed	30659
130.2 Removed	30659
130.3 (b), (d), (f), and (g) removed	30659
130.5 (b) (1) through (6) and (8) through (16) removed	30659
130.22 (c) removed	30659
130.31 Removed	30659
130.32 Removed	30659
130.33 Removed	30659
130.34 Removed	30659
130.35 Removed	30659
130.36 Removed	30659
130.37 Removed	30659
130.38 Removed	30659
130.39 Removed	30659
130.40 Removed	30659
130.41 Removed	30659
130.42 Removed	30659
130.43 Removed	30659
130.44 Removed	30659
130.52 Removed	30659
130.53 Removed	30659
130.55 Removed	30659
131.1 Revised	30659
131.2 (e), (f) and (n) removed	30660
131.6 Removed	30660
131.10 Removed	30660
131.12 Removed	30660
131.13 Removed	30660
131.14 Removed	30660
131.15 Removed	30660
131.16 Removed	30660
131.17 Removed	30660
132.1 Revised	30660

45 CFR—Continued

Chapter I—Continued	38 FR Page
132.2 (b), (c), (d), and (e) removed	30660
132.5 Removed	30660
132.6 Removed	30660
132.7 Removed	30660
132.8 Removed	30660
132.9 Removed	30660
132.10 Removed	30660
132.11 Removed	30660
132.12 Removed	30660
132.14 Removed	30660
132.16 Removed	30660
132.17 Removed	30660
132.18 Removed	30660
132.19 Removed	30660
132.20 Removed	30660
132.21 Removed	30660
132.22 Removed	30660
132.23 Removed	30660
132.24 Removed	30660
132.25 Removed	30660
132.26 Removed	30660
132.27 Removed	30660
147.2 (e) and (f) removed	30660
150.1 (f) removed	30660
151.2 (b), (d), (h), (j), (k), and (n) removed	30660
151.4 Removed	30660
151.5 (b) removed	30660
151.7 Removed	30660
151.8 Removed	30660
151.9 Removed	30660
151.11 Removed	30660
151.13 Removed	30660
151.14 Removed	30660
151.15 Removed	30660
151.16 Removed	30660
151.18 Removed	30660
151.19 Removed	30660
151.20 Removed	30660
151.21 Removed	30660
151.22 Removed	30660
151.23 Removed	30660
151.31 Removed	30660
151.32 Removed	30660
151.33 Removed	30660
151.34 Removed	30660
151.35 Removed	30660
151.36 Removed	30660
151.37 Removed	30660
151.38 Removed	30660
151.39 Removed	30660
151.40 Removed	30660
151.42 Removed	30660
151.43 Removed	30660
151.44 Removed	30660

45 CFR—Continued

Chapter I—Continued	38 FR Page
151.46 Removed	30660
151.47 Removed	30660
155.2 (b), (d), and (g) removed	30660
155.3 Removed	30660
155.7 (c) and (f) removed	30660
155.9 (a) removed	30660
155.11 Removed	30660
155.12 Removed	30660
155.13 Removed	30660
155.14 Removed	30660
166 Revised	16133
166.2 Removed	30660
166.3 (f), (g), (h), and (k) removed	30660
166.16 (a) removed	36060
166.21 (a) removed	30660
166.22 Removed	30660
166.23 Removed	30660
166.24 Removed	30660
166.25 Removed	30660
166.26 Removed	30660
166.27 Removed	30660
166.28 Removed	30660
166.29 Removed	30660
166.30 Removed	30660
166.31 Removed	30660
166.33 Removed	30660
166.34 Removed	30660
166.35 Removed	30660
166.36 Removed	30660
166.43 Removed	30660
166.44 Removed	30660
166.46 Removed	30660
166.47 Removed	30660
170 Revised	14096
170.1 (f) and (l) removed	30660
170.2 Removed	30660
170.3 Removed	30660
170.4 Removed	30660
170.5 (b) removed	30660
170.6 (b) (1) and (2) and (c) removed	30660
170.8 Removed	30660
170.13 (a)(4) removed	30660
170.14 (b) amended	30660
170.18 (a) and (c) removed	30660
170.19 Removed	30660
170.45 Removed	30660
173.1 (b), (d), (e), (g), and (i) removed	30660
173.14 Revised	30660
173.16 Removed	30660
173.23 Removed	30660
173.24 Removed	30660
173.25 Removed	30660

45 CFR—Continued

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Chapter I—Continued

173.26 Removed.....30660
173.27 Removed.....30660
173.28 Removed.....30660
173.29 Removed.....30660
173.30 Removed.....30660
173.31 Removed.....30660
173.32 Removed.....30660
173.33 Removed.....30660
173.37 Removed.....30660
175.2 (d), (h), and (s) removed.... 30660
175.15 Removed.....30660
175.16 (b) and (c) removed.....30660
175.17 Removed.....30660
176 Added.....15960
177.1 (d) and (i) removed.....30661
177.2 Revised.....25
177.4 (c)(3)(xiv) added.....1509
(c)(3)(xv) added.....9669
(c)(3)(xvi) added.....20072
(c)(3)(xvii) added.....27935
177.10 Added.....25
178.1 (d) and (i) removed.....30661
180 Revised.....16065
180.02 (a), (h), and (k) removed.....30661
180.03 Removed.....30661
180.04 Removed.....30661
180.05 Removed.....30661
180.06 Removed.....30661
185 Added.....3452
185.02 (b), (c), (h), (l), and (m) removed.....30661
185.03 Revised.....30661
185.31—185.38 (Subpart D) Added.....10094
185.44 (d)(3) revised.....21646
185.51—185.56 (Subpart F) Added.....10098
185.71—185.76 (Subpart H) Added.....10101
185.81—185.85 (Subpart I) Added.....10103
185.91—185.94 (Subpart J) Added.....10104
185.95 (b)(1) and (3) revised...13563, 21647
185 Appendix A removed.....30661
186 Added.....18018
186.2 Amended.....30661
186.31—186.34 (Subpart D) Removed.....30661
187 Added.....19826
187.2 Amended.....30661
187.3 Added.....30661

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Chapter I—Continued

187.21 Introductory text revised; (e), (f), (g), (h), (i), and (j) removed.....30661
187.31—187.34 (Subpart D) Removed.....30661
189 Added.....27825
190.31—190.39 (Subpart C) Added.....15419
190.41—190.48 (Subpart D) Added.....15421

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Establishment of Chapter.....13486
1501 Added.....13486

1974

45 CFR

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Chapter I

100a.10 (a) (22) and (24) removed.....19212
100a.400 Revised.....19212
100b.10 (1) added.....19213
101.10—101.13 (Subpart B) Added.....19212
130 Revised.....41711
131 Revised.....40495
132 Revised.....17540
133 Added.....17546
149 Added.....30042
151 Revised.....22147
154 Added.....14945
155.7 Revised.....19216
158 Revised.....22343
166.11 (a) revised.....18074
166.44 Removed.....17104
169 Added.....18650
170 Revised.....26724
170.6 (b) (1) and (2) and (c) removed.....17104
170.8 Removed.....17104
174 Added.....10567
175.3a Revised.....17547
175.14a Added.....37385
176 Revised.....37385
176.1 Corrected.....37987
176.4 (b) amended.....37987
176.16 (c) corrected.....37987
176.20 (e)(3) corrected.....37987
176.21 (a) corrected.....37987
177.4 (c)(3)(xviii) added.....1849
(c)(3)(xix) added.....17104
(c)(3)(xx) added.....25943
(c)(3)(xxi) added.....36967
180.13 (a) revised.....16886

45 CFR—Continued

Chapter I—Continued	39 FR Page
180.22 (b)(1) revised	16887
180.23 (a) revised	16887
180.24 (a) revised	16887
185.71 Revised	13268
185.72 Revised	13268
185.73 Revised	13269
185.74 Amended	13269
185.75 Revised	13270
185.76 Revised	13270
185.91 (a) revised	13270
185.91-1 Added	17547
185.92 (b)(4) added	13270
185.92-1 Added	17548
185.93-1 Added	17548
185.94-1 Added	17549
185.95 (b)(1) and (3) revised	13270
186.22 Removed	22424
186.31—186.33 (Subpart D) Added	22424
187.21 Introductory text revised; (e), (f), (g), (h), (i), and (j) removed	17104
189 Revised	15481
190.1—190.5 (Subpart A) Added	39413
190.11—190.16 (Subpart B) Added	39415
190.16 Added	39415
190.31—190.38 (Subpart C) Revised	24473
190.41—190.47 (Subpart D) Revised	24475
190.51 (Subpart E) Added	39416
190.61—190.66 (Subpart F) Added	39416
190.71—190.86 (Subpart G) Added	41800
192 Added	19213
Chapter XIV	
Chapter established	15485
Subchapter A established	38999
1400 Added	38999
1403 Added	39000
1410 Added	39005
1450 (Subchapter B) Added	15485
Chapter XV	
1501 Revised	1593

1975

45 CFR

Chapter I	40 FR Page
100c.1 (c-1) added	53494
101 Heading revised; eff. 10-24-75	41795

45 CFR—Continued

Chapter I—Continued	40 FR Page
101.1—101.4 (Subpart A) Heading removed; eff. 10-24-75	41795
101.10—101.13 (Subpart B) Removed; eff. 10-24-75	41795
112 Revised	16013
113 Revised	16015
114 Revised	16019
115 Revised	16032
121a Redesignated from 121.100—121.135 (Subpart B)	7411
Revised	19000
121a.81 Added	27459
121b Added	7413
121c Added	7414
121d Added	7416
121e Added	7419
121f Added	7419
121g Added	7422
121h Added	7422
121i Added	7424
121j Added	7428
123.01 (b) revised	26516
123.02 Revised	26516
123.12 (a)(1) and (d) revised; (h) added	26517
123.12-1 Added	26518
123.13 (b)(11) and (c) added	26518
123.14 (a) and (b) revised; (c), (d), and (e) added	26519
123.15 (a) revised	26520
123.16 (a) and (c) revised	26521
130.4 (b)(1)(ii) and (iii) amended; (b)(1)(iv) added	25013
130.16 (a)(2) amended	25013
130.17 (c) and (d) amended; (e) added	25013
130.18a Added	25013
130 Appendix A amended	25013
134 Added	53494
151.30—151.34 (Subpart C) Added	14762
151.40—151.43 (Subpart D) Added	20085
151.50—151.55 (Subpart E) Added	18552
153 Added; republished and redesignated from Part 60	11243
154.6 Revised	14918
155.7 Revised	14918
158 Revised	17713
166 Revised	17950
166.4 (b) amended	34115
166.6 Amended	34115
166.12 (e) amended	34115

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166.22 (a) (1) and (2) amended.... 34115
166.52 (d)(4) amended.... 34115
166.61—166.67 (Subpart G) Added.... 49532
166 Appendix C added.... 22230
169 Revised.... 23858
169.28 (a) corrected.... 40518
173 Revised.... 12081
175 Revised; eff. 10-18-76.... 36882
175.17 Added.... 22137
Revised.... 49271
175.18 Added.... 22137
176.13 Revised.... 22138, 49272
176.14 Revised.... 22139
177.1 (e) and (g) revised; (i) and (r) added.... 7593
177.4 (c)(3)(xxii) added.... 2813
(c)(3)(xxiii) added.... 18556
(c)(3)(xxiv) added.... 30820
(c)(3)(xxv) added.... 50035
177.6 (b) revised.... 34115
177.12 (a)(1)(vi) revised.... 34115
177.46 (c) and (d) revised; (c-1) added.... 7594
177.50 Removed.... 7595
177.61—177.66 (Subpart F) Added.... 7595
177.71—177.78 (Subpart G) Added.... 7597
180 Revised.... 25208
182 Added.... 20274
184 Added.... 21955
185.02 (c) added; (k) and (n) revised.... 25173
185.11 (b) (3), (c) (1) and (2), and (d)(1) and (2)(ii) revised; (b)(6) and (c)(4) added.... 25173
185.13 (k) introductory text and authority and (1), (2) and (n) revised.... 25173
185.14 (a) revised.... 25174
185.21 Revised.... 25174
185.24 (a) revised.... 25174
185.31 (a) authority and (a)(1) and (b) authority and (b)(1) revised; (c) removed.... 25175
185.32 (c) removed.... 25175
185.33 Revised.... 25175
185.34 (c) revised.... 25175
185.36 Removed.... 25175
185.37 (b)(1) revised.... 25175
185.41—185.45 (Subpart E) Heading revised.... 25175
185.41 (c)(3) and (d) revised.... 25175
185.44 (d)(3) and (g) revised.... 25176

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Chapter I—Continued

185.45 (a)(6), (b), (c)(1), and (a) and (c) authority citations revised.... 25176
185.46 Added.... 25176
185.51 Revised.... 25176
185.53 (c)(2) revised.... 25177
185.54 (a) and (c) revised.... 25177
185.55 (a)(2)(iv) and (b)(2)(iii) revised.... 25177
185.56 Revised.... 25177
185.61 (a) and (d)(1) revised.... 25177
185.62 Introductory text and (a), (d), (e), (g), (h), (i), (j) and (k) revised.... 25178
185.63 (b) (4), (6), and (7) revised.... 25178
185.64 (a), (b)(1)(i), and (b)(3)(iv) revised; (c)(3) removed.... 25178
185.65 (b)(3) revised.... 25178
185.71—185.77 (Subpart H) Revised.... 25178
185.83 Heading, (a) heading and introductory text revised.... 25181
185.84 (b) revised.... 25181
185.91—185.94-4 (Subpart J) Revised.... 25181
185.95 (a) removed; (b) authority and (b)(1) revised.... 25186
189 Revised.... 23301
190.16 Revised.... 15249
190.31—190.39 (Subpart C) Revised.... 15249
190.41—190.48 (Subpart D) Revised.... 15251
192.2 Amended.... 17844
192.3 (e) and (f) added.... 17844
(e) revised.... 27459
192.4 (a) amended; (b) added.... 17845
192.5 (b)(3) and (4) amended; (b)(5) through (9) added.... 17845
192.9 Revised.... 17845

Chapter XIII

1361 Added.... 54699
1362 Added.... 54718
1370 Added.... 58957

Chapter XIV

1460 Added.... 25454

Chapter XV

1501 Revised.... 12266

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Chapter I

100a.10 (a)(26) revised....15691
(a)(31) revised....16440
(a)(34) added....16768
(a)(36) revised....16942
(a)(35) revised....19638
100b.10 (Subpart A) Revised....1395
100b.15—100b.36 (Subpart B) Revised....1395
100b.17 (c)(6) revised....15691
100c.1 (f-1) added....15691
100c.2 Revised....15691
100c.3 Revised....15691
100d Added....10437
112 Revised....50777
113 Revised....50781
115.60-115.66 (Subpart G) Added....26326
116 Revised; eff. 11-13-76....42903
116a Added; eff. 11-13-76....42914
121a.5 (b) removed....35678
121a.10 (g) added....8608
121a.15 Added....8608
121a.81 Revised....11311
121d.50—121d.54 (Subpart C) Added....33558
121k Added....24126
123 Added....23862
130.22 (a) removed; (b) and (c) revised....1395, 36578
133 Appendix A revised....5393
148 Added....10201
154.6 Revised....19949
155 Revised....20082
Comment time extended....34962
157 Added....20091
159 Added....20099
162 Added....21460
166.15 Removed....1395, 35678
173.13 (b) removed....35678
174.1—174.5 (Subpart A-1) Revised....15691
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